Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

OCTOBER TERM, 2003

IMARI ABUBAKARI OBADELE AND
KURATIBISHA X ALI RASHID
Petitioners

v.

UNITED STATES
Respondent

On Petition For A Writ Of Certiorari
To The United States Court of Appeals
For the Federal Circuit
Record No. 02-5134

Petition For A Writ of Certiorari

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The Questions Presented for Review

The Petitioners have argued that, except for race, their deprivations of liberty meet the requirements of the *Civil Liberties Act of 1988,* amended in 1992, established for persons of Japanese ancestry and their spouses to receive $20,000 each in reparations for deprivations of liberty. An Administrative Record (*AR)* was developed in the Office of Redress Administration (ORA) in the Civil Rights Division of the U.S. Justice Department by these agencies and by the Petitioners unsuccessfully seeking reparations payments.

1. When the Courts below failed to evaluate Petitioners' essential pleading that Petitioners had suffered a major deprivation of liberty because of the United States' prevention of their use of the right to political self-determination, as descendants of persons held as slaves and freed by the Thirteenth Amendment, did these Courts unconstitutionally violate the Petitioners' Fifth Amendment equal-protection rights, approving an illegal *quota* for Japanese and their spouses, and engaging in an abuse of discretion and the *racial politics,* condemned by *Richmond v. Croson* and *Aderand v. Pena,* thereby degrading justice possibilities for 40-million Black people in the United States?

2. Whether, faced with a case and controversy properly before them, essential to determining whether the residuals of slavery and post-slavery racial discrimination qualified as *liberty deprivations* for the Petitioners, within the meaning of the U.S. Constitution and the Civil Liberties Act, the Courts below trampled the U.S. domestic and international law rights guaranteed to the Petitioners and the 40-million persons in the United States similarly situated.

3. Whether, when the Courts below failed to apply the test of "justification" set out in *Adarand v. Pena* (1995), for cases dealing with government-imposed racial discrimination, these Courts created the necessity for this Court to exercise its supervisory powers to prevent further mis-interpretations of the *Adarand* strict scrutiny rule, bad precedents, and miscarriages of justice?

PARTIES TO THE PROCEEDING

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Douglas L. Ishida v. The United States, 59 F3d 1224 (1995)

Dred Scott v. Sandford, 60 U.S. (19 How) 397 (1857)

Plessy v. Ferguson, 163 U.S. 537 (1896)

Regents of the University of California v. Bakke 438 U.S. 265 (1978)

Richmond v. J. A. Croson Co., 488 U.S. 469 (1989)

United States v. James, 528 F2d 999 (1976)

United States v. Wong Kim Ark 169 U.S. 649 (1897)

Citations of Opinion & Judgment From Lower Courts

Judgment (Without Opinion) from The United States Court of Appeals for the Federal Circuit, 11 April 2003. #02-5134 *Obadele v. United States.*

Obadele v. United States, 52 Fed.Cl. 432 (2002). The United States Court of Federal Claims.

Jurisdiction

The Judgment of the U.S. Court of Appeals for the Federal Circuit was entered on April 11, 2003. There was no application for a hearing *en banc*. The Court does not normally grant an *en banc* hearing where the panel has issued no opinion.

The statutory provisions which confer on this Court jurisdiction to review on a writ of certiorari the judgment in question are 28 U.S.C., Sec. 1254(1) and 28 U.S.C., Sec. 2101(c).

Constitutional Provisions, Treaties And Statutes Involved

United States Constitution

Article IV, Sec. 2, Par. 3 of the U.S. Constitution states:
"No person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due."

First Amendment, U. S. Constitution provides that "Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." History makes clear that "the people" referred to in this Amendment during slavery were White people. Even at the time of the ***Thirteenth Amendment*** (December 1865), which ended slavery, converting the Afrikan into 5/5ths a person, rather than 3/5ths, it remained problematical whether the Free Afrikan could enjoy First Amendment rights. Because, however, the Afrikan in America, here as the result of kidnapping and force, was "lawfully" on U.S. territory and free – and NOT a U.S. citizen – he/she was clearly entitled to hold status plebiscites to determine, petitioning the United States government, whether he or she wished to go to Africa or somewhere else, whether to be a U.S. citizen (if invited to be one), or whether to create a country of their own in North America in areas where they had lived for a long time as majority populations.

The Fifth Amendment provides, *inter alia,* that "no person" shall be deprived of life, liberty, or property without due process of law.

The Ninth Amendment: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." This supports international law rights and human rights for New Afrikans after the Thirteenth Amendment.

Treaties

International Covenant on Civil and Political Rights (Ratified by United States 1 June 1992) Provides for political self-determination rights. Article One, paragraph 1 states: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." This provision finds support in the Ninth Amendment to the U.S. Constitution. The 1984 International Law Conference at Lagos, Nigeria, defined "a people" for purposes of the Covenant on Civil and Political Rights and related uses as follows. "The term 'people' denotes a social entity possessing a clear identity and its own characteristics;"

Statutes *These Statutes are in the Appendix*

Civil Liberties Act of 1988, 50 USC app. 1989.
102 STAT. 903, Public Law 100-383

Civil Liberties Act Amendments, 50 USC app.
1989b note. 106 STAT. 1167 (1992)

Statement of The Case

On 10 August 1988, the U.S. Congress enacted the *Civil Liberties Act of 1988*, 50 USC app. 1989 (Public Law 100-383, 102 Stat. 903). Under this act Congress apologized to Japanese U.S. citizens and resident aliens and acknowledged "the fundamental injustice of the evacuation, relocation, and internment of United States citizens and permanent residents of Japanese ancestry during World War II." The Act also provided that $20,000 each would be provided to eligible Japanese. A second major purpose of the Act was to "make restitution to Aleut residents of the Pribilof Islands and the Aleutian Islands west of Unimak Island, in settlement of United States obligations in equity and at law" for "injustices suffered and unreasonable hardships endured while these Aleut residents were under United States control during World War II" *etc.*

On 27 September 1992 Congress amended the *Civil Liberties Act of 1988,* to provide, *inter alia,* that "a spouse or a parent of an individual of Japanese ancestry" was eligible for $20,000 payments the same as eligible Japanese, and that "A claimant may seek judicial review of a denial of compensation under this section solely in the United States Claims Court, which shall review the denial upon the administrative record and shall hold unlawful and set aside the denial if it is found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Civil Liberties Act Amendments of 1992,* 50 USC app. 1989b note. (Public Law 102-371. 106 Stat. 1167)

This Amendment was recommended to Congress by the U.S. Justice Department, the agency responsible for administering the Act, on the basis that by making only persons of Japanese ancestry, who had been interned, eligible for redress White and other spouses who were also interned with their Japanese spouses, to maintain their families, were unfairly excluded.

To carry out duties under the Act, the Justice Department created under its Civil Rights Division an "Office of Redress Administration," the *ORA*. Three persons, who would become plaintiffs in a suit filed in the U.S. Court of Federal Claims on 5 February 1999, sent letters to the ORA requesting payments under the Civil Liberties Act and urging the ORA and "the Attorney General to seek Congressional extensions and new appropriations under the Civil Liberties Act of 1988, as appropriate to provide additional funds for all those New Afrikans similarly situated." *Administrative Record* (AR), pages 8-10. These persons were: Imari Abubakari Obadele, Ph.D., of Texas; Kuratibisha X Ali Rashid, of Florida, and Kalonji Tor Olusegun of Washington, D.C. In his opinion filed at the conclusion of the case in the lower court, the United States Court of Federal Claims, *Obadele v. United States,* 52 Fed.Cl., 4432 (2002), Chief Judge Baskir wrote:

> "Each plaintiff filed his initial claim with the ORA before the ten-year anniversary of the Act, although all were very close to the sunset date (Dr. Obadele on August 3, Mr. Rashid on August 4 and

> Mr. Olusegun on the Fund's expiration date, August 10, 1998.) Their claims were not rejected as untimely. Dr. Obadele's claim was denied prior to the termination date. Dr. Obadele formally appealed through administrative channels and his appeal was processed to a decision." 52 Fed.Cl, at 439

Under date of 5 February 1999, ORA Administrator DeDe Greene mailed to Dr. Obadele a final denial letter. AR 89-91. The letter said: "One of the threshold criteria of the Act requires that an individual be of Japanese ancestry, or the spouse or parent of an individual of Japanese ancestry." None of the three claimants argued that description. The letter also stated:

> "You have claimed various types of deprivations; however, none of your losses were [*sic*] as a result of Executive Order 9066 or any other related Federal government action. Thus, any deprivations sustained by you are not losses covered by the Act because your losses were not Federal government action 'respecting the evacuation, relocation, and internment' program."

Significantly the provision of the Act to which Administrator Greene refers does not limit the deprivations to only acts by officials related to Executive Order 9066 but extends to deprivations by

> "(III) any other Executive order, Presidential proclamation, law of the United States, directive of the Armed Forces of the United States, or other action taken by or on behalf of the United States or its agents,

> representatives, officers or employees, respecting the evacuation, relocation, or internment of individuals solely on the basis of Japanese ancestry; or ***" 50 USC app., 1989b-7; Sec. 108. Definitions.

As indicated the three plaintiffs filed suit in the Court of Federal Claims, and the decision of the Court is found at *Obadele v. U.S.*, 52 Fed. Cl., 444. The Court wrote:

> "The Government's motion to dismiss, based upon lack of subject-matter jurisdiction and failure to state a claim upon which relief can be granted is DENIED. Upon exercising our jurisdiction to review the record in this matter, we find the decision of the ORA in denying Plaintiffs' claims for restitution under the Civil Liberties Act of 1988 is supported by the administrative record, and is not arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law. Accordingly, Defendant's motion for judgment upon the administrative record is GRANTED."

A three-judge panel of the United States Court of Appeals for the Federal Circuit heard brief oral arguments on 9 April 2003, and issued a decision without opinion on 11 April 2003. The decision stated: **Judgment** On Appeal from the UNITED STATES COURT OF FEDERAL CLAIMS in Case No(s) 99-CV-195 This CAUSE having been heard and considered, it is ORDERED and ADJUDGED: Per Curiam (Clevenger, Schall, and Dyk, Circuit Judges). AFFIRMED. See Fed. Cir.R.36.

Thus, the issues for substantive appeal and the basis for the issuance of a Writ of Certiorari are found in the opinion of the U.S. Court of Federal Claims *Obadele v. United States,* 52 Fed. Cl. 432 (2002).

Basis For Federal Jurisdiction in The Court Of First Instance

This grant of jurisdiction is found in the *Civil Liberties Act Amendments of 1992.*, 50 USC app. 1989b note, Section 4 (b)(h) JUDICIAL REVIEW. –

> "(1) REVIEW BY THE CLAIMS COURT. – A claimant may seek judicial review of a denial of compensation under this section solely in the United States Claims Court, which shall review the denial upon the administrative record and shall hold unlawful and set aside the denial if it is found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

Issues Appropriate for Issuing the Writ

A. ***A Crucial Matter of First Impression.*** In the opinion below the Court of Federal Claims dismissed with bare comment and no legal discussion the claim of the Petitioners that the United States government had denied their exercise of their right to self-determination. Clearly this assertion was a central element in proving denial of the Petitioners' fundamental liberty, as well as that of all those similarly situated.

At page 434, Chief Judge Baskir wrote: "***Except*** for their allegation that they are descendants of persons who were 'confined, held in custody, relocated or otherwise deprived of liberty or property,' Plaintiffs Obadele, Rashid, and Olusegun do not fall within any category of individuals explicitly afforded relief under the Act." (*Emphasis added.*) The "except for" discarding of the petitioners' argument at this point, without more – such as an examination of the allegations/evidence – suggests an unconstitutional crossing of the line barring racial politics.

Just before the Civil War Chief Justice Taney had the unpleasant task of telling his fellow citizens that neither Dred Scott nor any enslaved or free New Afrikan could be considered a U.S. citizen in terms of the U.S. Constitution – and that if persons desired to extend citizenship to persons of African descent, the process could occur by changing the Constitution by methods described therein. *Dred Scott v. Sandford,* 60 U.S. (19 How.) 397 (1857), at 426. After the Civil War, the Court spoke mightily three times, before 1954, with respect to liberty rights of people of African descent.

The *Civil Rights Cases,* 109 U.S. 3 (1883), held that the 14th Amendment did not protect the "social" rights of New Afikans, such as the right to visit restaurants and theatres. *United States v. Cruikshank,* 92 U.S. 542 (1876) held that the federal government would not protect New Afrikans against murderous violence perpetrated by ordinary White civilians. One hundred years of lynching of the Petitioners' ancestors and class, followed.

In *Plessy v. Ferguson*, 163 U.S. 537 (1896) this Court held that imposing the indignity of racially segregated public facilities and services upon the class and ancestors of the Petitioners was constitutional. One year after *Plessy v. Ferguson*, this Court in *United States v. Wong Kim Ark*, 169 U.S. 649, at 693 undertook to explain how the U.S. Government could *impose* U.S. citizenship upon the kidnapped people without their consent: "The Fourteenth Amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country ..." But there was no protection of New Afrikans by the U.S. Government before or after *Wong Kim Ark*, in law or practice, until after the Civil Rights and Voting Rights acts of 1964 and 1965. This was twenty years *after* the relevant timeframe in the Civil Liberties Act. During the Civil Liberties Act's timeframe the Petitioners suffered Government-imposed indignities – including deprivations of self-determined liberty.

Mr. John Shattuck, Assistant U.S. Secretary of State for Human Rights, in his Preface to the United States Report to the United Nations Human Rights Committee, September 1994, wrote:

> "Over the course of its history, America has experienced egregious human rights violations in this ongoing American struggle for justice, such as the enslavement and disenfranchisement of African Americans and the virtual destruction of many Native American civilizations.

> "The profound injustices visited on African Americans were only partially erased after the Civil War (1861-1865), and then a century later by the civil rights movement of the 1950s and 1960s ..."

When the Courts below acted as if the Petitioners had not cited the deprivation by the United States of their right to political self-determination, in making their case of liberty deprivations, these Courts damaged the Petitioners and all the 40-million similarly situated persons in the United States who seek justice in a forum – Civil Liberties Act litigation - where sovereign immunity is not a bar. Those courts closed the court doors to persons who are descendants of persons kidnapped from Africa, enslaved, and, after slavery, denied important rights by government until 40 years ago, a time when the Petitioners were teenagers. The fact that this issue is of *First Impression* in this Court is a reason not to ignore it but to compel the lower courts to explore it, abandoning any taint of racial politics, the "popular" belief that reparations should be paid to Indians, Japanese, and Eskimos but not to New Afrikans.

Also, a constitutionally impermissible result of the lower Courts' action is to convert an act of Congress into a "quota" for Japanese and their spouses. Government-imposed racial quotas did not just become unconstitutional in June 2003 (*Grutter v. University of Michigan,* No. 02-241). They became so in 1978 in *Regents of the University of California v. Bakke,* 438 U.S. 265. The Fifth Amendment still stands as a guarantee of equal protection under the laws for individuals (and, through individuals, *groups).*

On 1 June 1992 the first President George Bush signed and issued a proclamation of ratification for "The International Covenant On Civil and Political Rights." This proclamation firmly moved the United States into the present era where conquering states have formally acknowledged the fundamental human rights of conquered people, like Indians and New Afrikans. In Article One, first paragraph, this treaty, now part of the supreme law of the land, states: *All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

In the opinion below the Court does recognize that " ... Plaintiffs base their claims upon the enslavement of their ancestors and the continuing failure of the United States to recognize African-Americans' right to self-determination following the abolition of slavery." 52 Fed.Cl., at 434. But this essential pleading is not addressed further.

Importantly, in the Administrative Record, page 65, there is a U.S. Department of State document which Dr. Obadele was required to fill out by the Port Director at Dulles Airport as he returned from overseas 5 September 1989, using a passport issued by the Provisional Government of the Republic of New Afrika. The port authorities refused to permit entry with his passport and provided admission only on their judgment that since Dr. Obadele was born in Philadelphia, Pennsylvania, he could be admitted as a "USC" (United States citizen). This was a U.S. officer acting outside of the World War II timeframe, but teachers and

other government officials, within the timeframe – President Franklin Roosevelt and Congresses – supported the same denial of self-determination rights of Dr. Obadele and those similarly situated. AR, page 66.

Equally as important page 63 of the AR is a form issued by the ORA to Dr. Obadele which he executed. The form is entitled "Evacuation/Relocation Information." Question (1) is: "Provide your address immediately prior to evacuation or relocation below." Dr. Obadele's answer is: "Street and city are unknown because the relocation began with the forcible relocation of my forebears from Afrika beginning before 1865, under U.S. law, for purposes of enslavement and dehumanization under British and U.S. law, contrary to their human rights. Until today the U.S. has not repaired this human relocation and retention in the U.S." Question (2) asks "Where were you located to?" Answer: "As a result of the relocation and retention in the U.S. of my forebears, i was born at 1130 Dorrance Street, Philadelphia, Pennsylvania." The case of *Douglas Ishida v. The United States,* 59 F.3d 1224 (1995) is important here.

Mr. Douglas Ishida was born in Ohio in November 1942, *after* his parents had "voluntarily" relocated from California in anticipation of being involuntarily relocated. The ORA deemed both parents to be eligible under the Civil Liberties Act and awarded them compensation. "In 1992, however, the ORA denied [Douglas] Ishida's claim for compensation under the Act, concluding that he was not eligible because his 'losses were not the result of government

action as defined in the Act and the implementing regulations ...' The Assistant Attorney General for Civil Rights subsequently affirmed the ORA's denial ..." 59 F.3d, at 1228. The U.S. Court of Appeals for the Federal Circuit then "Reversed" the Court of Federal Claims and the ORA, finding that Mr. Ishida "was, by being excluded from his family home, deprived of liberty as a result of the specified laws and orders. Therefore, We conclude that Ishida is entitled to compensation under the Act." 59 F.3d, at 1234.

Once relocated, as Mr. Ishida was by the relocation of his forebears, Mr. Rashid and Dr. Obadele suffered further deprivations of liberty.

B. ***Other Deprivations of Liberty Improperly Dismissed***

On AR pages 24-26 Dr. Obadele, addressing the Assistant Attorney General in a *Statement of Facts and Law,* during his Administrative appeal, wrote:

> "12. Dr. Obadele and his family suffered damage through the 'education' imposed on him in the public schools of Philadelphia, Pennsylvania, pursuant to the practice of Pennsylvania and United States officials, under color of law, in two outstanding ways. (A) These officials conspired to make him and others similarly situated believe that the enslavement of New Afrikans in the United States was not a violation of human rights by demanding that students honor such Whites as Thomas Jefferson and George Washington who together held over two

hundred people in slavery, thus sowing the implication that the enslavement of Afrikan people was unimportant and non-criminal and that Black life is not of value and not to be respected; thus, further, contributing to violence among young people in communities where Dr. Obadele, his family, and others similarly situated live today.

"(B) Secondly the said officials, under color of law, refused to teach and honor the armed struggle of the ancestors of Imari Obadele and other New Afrikans who took up arms against American oppression, in a situation where he and other students were being taught to honor Whites who took up arms to 'fight for freedom,' thus fueling the racist calumny that of all the oppressed peoples in the world, New Afrikans in the United States never took up arms to fight for our own freedom, thus further fueling the concept of New Afrikan racial inferiority, and defaming and damaging Dr. Obadele and those similarly situated.

"The failure of these officials to include in public school courses and in most college courses, before, during, and after the relevant timeframe of the Civil Liberties Act of 1988 the fact that the kidnapped people held as slaves in the United States, and their progeny, including Dr. Obadele and those

similarly situated, have the right to self-determination damaged Dr. Obadele and those similarly situated by depriving them for various time periods of the political and legal knowledge and tools to attempt to hasten the end of what the *Adarand* court saw in 1995 as 'the unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country.' *Adarand,* [515 U.S., at 237]."

On page 24 of the AR, Dr. Obadele indicates damage to him by the racist managers at Campbell Soup Co. "in 1944-1947."

C. ***The Court of Appeals For The Federal Circuit Has Created An Adarand Principle At Variance with The Supreme Court And Requires Correction To Prevent Courts from Following It.***

In the *Adarand* case the Justices took time to make clear that, as Judge Baskir put it, "all race-based classifications by any level of government, must survive strict scrutiny." Obadele v. U.S., 52 Fed.Cl, at 443. But the trial court, supported without reservation by the United States Court of Appeals for the Federal Circuit, applied only part of the *Adarand* standard and related explanation. Judge Baskir rested only upon the *Adarand* statement that race-based eligibility guidelines "are constitutional only if they are narrowly tailored measures that further compelling governmental interests." *Obadele v. U.S., id.* But the Court below, following Judge Baskir's interpretation of the

standard for approving the race-based exclusiveness accorded in his decision to Japanese and non-Japanese spouses and children only, failed to apply the further specifics set out by *Adarand*.

> "The principle of consistency simply means that whenever the government treats any person unequally because of his or her race, that person has suffered an injury which falls squarely within the language and spirit of the Constitution's guarantee of equal protection. It says nothing about the ultimate validity of any particular law; that determination is the job of the court applying strict scrutiny. The principle of consistency explains the circumstances in which the injury requiring strict scrutiny occurs. The application of strict scrutiny, in turn, determines whether a compelling governmental interest justifies the infliction of that injury." *Adarand v. Pena*, 515 U.S., at 229-230, and at 224.

Neither Court below provided any examination to determine if the injury to the petitioners was "justified."

This is bad law. And because the appeals court has embraced it, the spread of this bad law could be extensive. Our petition requests the Supreme Court to exercise its supervisory powers and reverse the Appeals Court's distortion of *Adarand*, preventing the present and future harmful interpretations, precedents, and miscarriages of Justice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, acting for and on behalf of or being one of the attorneys for Petitioners IMARI A. OBADELE and KURATIBISHA X ALI RASHID, hereby certifies that on July 8, 2003, he served the following Respondents the foregoing Petitioners' Petition for Writ of Certiorari and Appendix on all parties to this appeal by mailing copies thereof by first class mail, postage prepaid, addressed to their attorney, as follows:

ATTY. STEVEN J. ABELSON
Trial Attorney
DEPARTMENT OF JUSTICE
1100 L. STREET, N.W., Room 11042
Washington, D.C. 20005

and by filing 40 copies each of the Petition for Writ Of Certiorari and the supporting Appendix with the Clerk of Court for the United States Supreme Court by *Federal Express* at the Supreme Court of the United States, 1 First Street, NE, Washington, D.C. 20543

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Supreme Court, U.S.
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(2) 03 67 JUL 8 2003

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APPENDIX

No.

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NOTE: Pursuant to Fed.Cir. R. 47.6, this disposition is not citable as precedent. It is a public record. This disposition will appear in tables published periodically.

United States Court of Appeals for the Federal Circuit

02-5134

IMARI ABUBAKARI OBADELE and
KURATIBISHA X ALI RASHID,

Plaintiffs-Appellants, and

KALONJI TOR OLUSEGUN,
Plaintiff,

v.

UNITED STATES,
Defendant-Appellee.

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT
APR 11 2003
JAN HORBALY
CLERK

Judgment

On APPEAL from the UNITED STATES COURT OF FEDERAL CLAIMS in CASE NO(S). 99-CV-195

This CAUSE having been heard and considered is ORDERED and ADJUDGED:

Per Curiam (CLEVENGER, SCHALL, and DYK, Circuit Judges).

AFFIRMED. See /Fed. Cir. R. 36.

ENTERED BY ORDER OF THE COURT

DATED APR 11 2003

Janhorbaly (SD)
Jan Horbaly, Clerk

Imari Abubakari OBADELE, Kuratibisha X Ali Rashid, and Kalonji Tor Olusegun, Plaintiffs,

v.

THE UNITED STATES of America, Defendant.

No. 99-195C.

United States Court of Federal Claims.

April 24, 2002.

African-Americans filed claims under the Civil Liberties Act (CLA) based on the enslavement of their ancestors and the continuing failure of the United States to recognize African-Americans' right to self-determination following the abolition of slavery. The Office of Redress Administration (ORA) denied the claims, and claimants sought judicial review. On defendant's motion to dismiss, or in the alternative, judgment on the administrative record, the Court of Federal Claims, Baskir, Chief Judge, held that: (1) fact that African-Americans filed for redress under the CLA and were denied relief by the Office of Redress Administration (ORA), rightly or wrongly, made them proper "claimants" with standing to seek judicial review in the Court of Federal Claims; (2) CLA section providing for judicial review exclusively in the Court of Federal Claims is independent of the Tucker Act, and fact that the CLA may not be money-mandating for lack of appropriated funds does not preclude judicial review in such circumstance; and (3) CLA did not violate equal protection or due process rights of African-American claimants denied redress under the Act.

Motion to dismiss denied; motion for judgment on the administrative record granted.

1. Federal Courts ⇐1110

Fact that African-Americans filed for redress under the Civil Liberties Act (CLA) and were denied relief by the Office of Redress Administration (ORA), rightly or wrongly, made them proper "claimants" with standing to seek judicial review in the Court

of Federal Claims. Civil Liberties Act of 1988, § 105(h)(1), 50 App.U.S.C.A. § 1989b–4(h)(1).

2. Federal Courts ⇐1141

Provision of the Civil Liberties Act (CLA) providing for judicial review exclusively in the Court of Federal Claims is independent of the Tucker Act, and fact that the CLA may not be money-mandating for lack of appropriated funds does not preclude judicial review in such circumstance. 28 U.S.C.A. § 1491; Civil Liberties Act of 1988, § 105(h)(1), 50 App.U.S.C.A. § 1989b–4(h)(1).

3. Federal Courts ⇐1071

Once jurisdiction of the Court of Federal Claims over a case is established, there is no restriction on the Court's ability to review equal protection, due process or other constitutional claims. U.S.C.A. Const.Amends. 5, 14.

4. Constitutional Law ⇐215

Classifications based on race or national origin are subject to strict scrutiny on equal protection challenge, and they must be a necessary and finely tuned means of fulfilling a compelling governmental interest. U.S.C.A. Const.Amend. 5.

5. Constitutional Law ⇐215.2, 291.6
War and National Emergency ⇐36

Civil Liberties Act (CLA) which provides for redress payments to Japanese Americans affected by World War II internment did not violate equal protection or due process rights of African-American claimants denied redress under the Act; race-based eligibility guideline of the Act is narrowly tailored to further compelling governmental interest of compensating Japanese Americans affected by the internment policy. U.S.C.A. Const.Amend. 5; Civil Liberties Act of 1988, § 101 et seq., 50 App.U.S.C.A. § 1989b et seq.

Maynard M. Henry, Sr., Alexandria, VA, for Plaintiffs.

Steven J. Abelson, Washington, DC, with whom were David W. Ogden, David M. Cohen, and Robert E. Kirschman, for Defendant. Tink D. Cooper, of counsel.

OPINION

BASKIR, Chief Judge.

Three Plaintiffs—Dr. Imari Abubakari Obadele, Mr. Kuratibisha X Ali Rashid, and Mr. Kalonji Tor Olusegun—seek compensation from the United States in order to redress wrongs they—or, more specifically, their ancestors—suffered as members of the African American race. Plaintiffs assert that the Tucker Act, 28 U.S.C. § 1491(a)(1) (1994), and the Civil Liberties Act of 1988. 50 U.S.C. app. § 1989b–4(h), Pub.L. 100–383 (Aug. 10, 1988), 102 Stat. 903, (the Act, or the

CLA), as amended Pub.L. 102–371 (September 27, 1992), 106 Stat. 1167 (West 2001), entitle them to such relief.

Defendant brings a motion to dismiss for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted, pursuant to RCFC 12(b)(1) and 12(b)(4), respectively. In the alternative. Defendant argues that Rule 56.1 entitles it to judgment upon the administrative record.

Defendant's motion to dismiss is hereby DENIED. Notwithstanding numerous arguments to the contrary, Plaintiffs can sustain an action under the CLA's independent grant of jurisdiction. However, on the record before us we find that Defendant is entitled to judgment as a matter of law. Accordingly, Defendant's motion for judgment upon the administrative record is GRANTED.

STATUTORY FRAMEWORK

The Civil Liberties Act of 1988 provides a formal apology and benefits, including redress payments of $20,000, to certain individuals affected by the Federal Government's evacuation, relocation, or internment of United States citizens and permanent resident aliens of Japanese ancestry during Word War II. 50 U.S.C. app. § 1989. The statute established within the Justice Department Civil Rights Division the Office of Redress Administration (ORA) to identify individuals eligible for relief in connection with those wrongs associated with the World War II emergency action.

The Attorney General prescribed rules implementing the Act's redress provisions. Those rules clearly define standards of eligibility. Under those rules claimants must demonstrate that:

(1) They are of Japanese ancestry; and

(2) They were living on the date of the Act's enactment, August 10, 1988; and

(3) During the evacuation, relocation, and internment period (December 7, 1941 through June 30, 1946) they were:

United States citizens; or

Permanent resident aliens who were lawfully admitted into the United States; and

(4) They were confined, held in custody, relocated, or otherwise deprived of liberty and property as a result of Executive Order 9066 or other related federal government action respecting the evacuation, relocation, or internment of individuals solely on the basis of Japanese ancestry.

28 C.F.R. § 74.3 (Eligibility Determinations)

The Act was subsequently amended as follows to provide for judicial review exclusively in this Court:

A claimant may seek judicial review of a denial of compensation under this section *solely in the United States Claims Court [United States Court of Federal Claims],* which shall review the denial upon the administrative record and shall hold unlaw-

> ful and set aside the denial if it is found to be arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

50 U.S.C. app. § 1989b–4(h)(1) (2001) (emphasis added); Pub.L. 102–371, §§ 4,5,6 (a) (Sept. 27, 1992), 106 Stat. 1167, 1168. This provision has been held to be a specific waiver of sovereign immunity; it authorizes the Court to review denials of compensation and to award payments under the Act. *See Murakami v. United States*, 46 Fed.Cl. 653, 656 (2000). Notwithstanding this explicit statutory grant of jurisdiction, Defendant has challenged the Court's jurisdiction as applied to Plaintiffs' claims.

BACKGROUND

Except for their allegation that they are descendants of persons who were "confined, held in custody, relocated or otherwise deprived of liberty or property," Plaintiffs Obadele, Rashid, and Olusegun do not fall within any category of individuals explicitly afforded relief under the Act. U.S.C. §§ 1989b–7(1)–(2). This is undisputed. Plaintiffs' claims before the ORA, and now before this Court, are based not upon Japanese ancestry, the internment, or any effects of the war-time emergency action. Instead, Plaintiffs base their claims upon the enslavement of their ancestors and the continuing failure of the United States to recognize African–Americans' right to self-determination following the abolition of slavery. *See* Pl. Resp. to Def. Supp. Br. at 15 ("[D]escendants of persons kidnap[p]ed from Afrika [sic] who have been born in the United States are U.S. citizens without a right to self-determination.")

Dr. Obadele is affiliated with a movement to create an independent "New Afrikan" state in the southern United States. At one point he renounced his citizenship, claiming instead to be a "citizen" of the Republic of New Afrika. As the one-time President of the "Republic of New Afrika," Dr. Obadele has taken up arms against the United States to protect his "capitol" in Mississippi. When, under his leadership, his supporters murdered one law enforcement officer and wounded several others, Dr. Obadele unsuccessfully sought immunity for his actions claiming to be the leader of a sovereign nation. His resulting prosecution and incarceration was seen by him as but another reason he is entitled to restitution. *See* Application for Redress, Dr. Obadele (August 3, 1998); *see generally, United States v. James*, 528 F.2d 999 (5th Cir.1976)(Obadele, a/k/a Richard Bullock Henry, was sentenced to twelve years confinement for his convictions in United States District Court, S.D. Miss., for conspiracy, assault on federal officers and firearms violations.) In this instance, however, he and his fellow Plaintiffs have resorted to lawful means to secure the relief they seek.

The Plaintiffs' case was first presented before the ORA. Dr. Obadele and Mr. Rash-

id filed their claims on August 3, 1998; Mr. Olusegun filed his on August 10, 1998, the date of the Act's sunset provision. There has been no allegation that the claims were untimely. The claimants sought $20,000 in

redress payments for themselves and their family members. In apparent recognition of the fact that the statute provided no relief for them as literally read, Plaintiffs also requested that the Director of the ORA "urge the Attorney General to seek Congressional extensions and new appropriations under the Civil Liberties Act of 1988, as appropriate to provide additional funds for all those New Afrikans similarly situated." Application for Redress, Dr. Obadele (August 3, 1998). It is unclear to what extent the Attorney General complied with this request. However, the administrative record does reveal that Congressman Conyers (D–MI), who has repeatedly sponsored African–American reparations legislation, was notified of Dr. Obadele's claim. Administrative Record (AR) at 84–87.

The ORA promptly denied Plaintiffs' claims for failure to meet eligibility criteria. Although the claims apparently failed to establish a number of the requirements detailed above, ORA's denials emphasized the failure to establish the first requirement—Japanese ancestry—describing the requirement as a "threshold legal criterion." Letter of DeDe Greene (November 19, 1998) at AR 3; Letter of Deborah Cooper (August 7, 1998) at AR 15.

On October 13, 1998, Dr. Obadele appealed to the Assistant Attorney General, Civil Rights Division, as instructed by the ORA, asking that he reverse the ORA's ruling as arbitrary, capricious, an abuse of discretion,

and contrary to law. *See* 28 C.F.R. §§ 74.15–16 (1989)(Persons determined ineligible may appeal within sixty days to the Assistant Attorney General for the Civil Rights Division). In his appeal, Dr. Obadele again urged the Attorney General to seek Congressional extension or re-enactment of the Civil Liberties Act to reimburse him and those similarly situated "five times $20,000 on the basis of the longer racist suffering of the members of the class, as compared with the suffering of the Japanese, who well deserved the small amount of money awarded them." Appeal of Denial of Redress Claim, Dr. Obadele (October 13, 1998). In an extensive exchange of correspondence over a total of six months, Dr. Obadele repeated this request several times and provided additional documents that were requested by the Assistant Attorney General's Office during the pendency of his appeal.

Finally, on February 5, 1999, the ORA notified plaintiffs that not only were their claims denied (this time on the basis of a number of reasons, not just for failure to establish Japanese ancestry), but also that the redress program expired on that very date. Nonetheless, the letter went on to explain that Plaintiffs had sixty days upon receipt of the letter to file an appeal. AR 89–91.

The agency also reiterated the basis for its earlier denial of Dr. Obadele's claim, resting on the fact that the plaintiffs were admittedly not of Japanese ancestry:

> One of the threshold criteria of the Act requires that *an individual be of Japanese*

ancestry, or the spouse or parent of an individual of Japanese ancestry.

* * * * * *

In support of your claim, you submitted a declaration under oath as well as several written statements and supporting documentation indicating you are of "Afrikan" ancestry. Based on a review of your file, *you have clearly indicated that you are not of Japanese ancestry* . . . Nor have you claimed or submitted proof that you were the spouse or parent of an individual of Japanese ancestry and were evacuated, relocated or interned with your spouse or parent as a result of specific Federal government action as set forth in the Act. You have claimed various types of deprivations; however, none of your losses were as a result of Executive Order 9066 or any other related Federal government action. Thus, any deprivations sustained by you are not losses covered by the Act because your losses were not Federal government action "respecting the evacuation, relocation, and internment" program. Nor was it Federal government action based solely on Japanese ancestry.

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Letter of DeDe Greene, Administrator for Redress (Feb. 5, 1999)(emphasis added); AR at 89–90.

The Court is at a loss to explain why the claims were again denied rather than the appeal acted on. We can only surmise that it has something to do with Dr. Obadele's subsequent application for consideration as a

"unique case," which resulted in the submission of further documentation by Dr. Obadele. AR 61–83. In any event, all parties have treated this latest rejection of Dr. Obadele's claim as final agency action for purposes of judicial review. *See* Def. Mot. to Dismiss at 21, n 10 (Because Dr. Obadele did not receive the February 5, 1999, letter until February 10, 1999, the Government chose not to assert a jurisdictional defect for failure to exhaust administrative remedies).

Plaintiffs contend that this denial of their claim was "contrary to law" because the ORA relied on the statutory requirement that successful claimants must be of Japanese ancestry, a racial classification that violates the Plaintiffs' constitutional guarantee of equal protection and due process. They ask that we reverse the administrative decision of the ORA, certify the plaintiffs as eligible persons under a constitutional reading of the Act, and require the Attorney General to request that Congress extend the redress program to African–Americans.

DISCUSSION

I. Procedural Questions

We agree with Defendant that the ORA cannot be faulted for denying relief it could not provide because of eligibility restrictions explicit in the Act. Clearly, the ORA was created for the class of individuals affected by internment and the other aspects of the emergency action put in force by President Franklin D. Roosevelt during the Second World War. However, in determining whether the ORA's denial of Plaintiffs' claims survives judicial review—whether it was not

contrary to law—we are compelled to decide whether the racial classification in the Act complies with constitutional equal protection. Put another way, we unavoidably must address Plaintiffs' primary grievance—Congress' failure to enact similar legislation for African-Americans. We do so mindful of the doctrinal caution that constitutional inquiries should be undertaken only as a last resort. *See Rescue Army v. Municipal Court of the City of Los Angeles*, 331 U.S. 549, 67 S.Ct. 1409, 91 L.Ed. 1666 (1947).

Before launching into this equal protection analysis, however, the Court must be satisfied that it has jurisdiction. Initially, the Government placed inordinate emphasis in briefing the jurisdictional issues and paid little attention to either the merits of the case or the constitutional challenges presented. We heard oral argument on the motion to dismiss and soon determined that supplemental briefing was required. We allowed further briefing on the constitutional issues involved in the case, followed by a second hearing on the matter.

Additionally, Defendant indicated that certain fiscal issues may render the case moot because of the lack of further funds to compensate those with legitimate claims under the CLA. This argument and its corollary jurisdictional argument—that there is no money-mandating jurisdictional underpinning for Plaintiffs' claims here—rest on the assumption that the ORA fund has been exhausted with no expectation of being replenished by further authorizations or appropriations for redress payments. At oral argument Defendant set forth this "sunset theory," although counsel candidly conceded

that the Department of Justice was looking into modifying its policy on the funding of the ORA.

One question never satisfactorily addressed is whether this Court's Tucker Act jurisdiction is dependent on the money-mandating character of a statute, or on the year-to-year vicissitudes of the appropriations and fiscal processes through which our judgments may be paid. That question is rendered even more uncertain in this case because the duration of the redress program and, consequently, Plaintiffs' substantive right to money, is tied to the availability of funds in the program, and that availability seemingly is affected by any number of technical administrative, accounting, and other

uncertain fiscal events, many subject to actions of the Defendant, the United States.

We note that one case in particular, *Murakami v. United States*, 46 Fed.Cl. 653 (2000), although not binding upon us, addressed the availability of funds argument. Among the things *Murakami* reveals is that the Fund has been replenished after being exhausted, thereby resuscitating an allegedly dead program. The replenishment was authorized by a later appropriation and by administrative reprogramming implemented within the Department of Justice. *See id.* at 654. Moreover, it may not be possible at any particular moment to determine precisely whether funds actually are available. Thus, if the Government is correct in arguing that the Court's jurisdiction turns on the actual availability of funds, the Court could have jurisdiction one moment and not the

next, winking in and out of existence, like some jurisdictional quantum particle.

We permitted the Government to supplement its papers to address this point in more detail and to reflect its emerging policy on the availability of redress funds. However, Defendant has added nothing to its analysis of the sunset theory with supplemental briefing except to say that it believes that the decision in *Murakami* was in error.

With the completion of its briefing, the Government argues that the following reasons compel this Court to dismiss Plaintiffs' claims: (1) Plaintiffs cannot establish standing; (2) the Court lacks subject matter jurisdiction to hear these claims; and (3) Plaintiffs have failed to state a claim upon which relief can be granted. Should we take up the merits of the case, the Government argues that the statute is not unconstitutional and that the ORA rightfully denied the Plaintiffs' administrative claims. We address these questions in turn.

A. Proper Claimants:

[1] Pursuant to RCFC 12(b)(1) Defendant brought a motion to dismiss, arguing that jurisdiction is lacking because Plaintiffs are not covered by the Act. Essentially, the Government argues that the statute serving as a jurisdictional underpinning here is not money-mandating, at least not *as it is applied to Plaintiffs*. We reject this argument for a number of equally cogent reasons.

First, although the Complaint invokes this Court's Tucker Act jurisdiction, the CLA,

also invoked, contains a specific and exclusive grant of jurisdiction to this Court, and is not dependent on its meeting Tucker Act requirements.

The plain words of the CLA conclusively resolve this issue against the Government: A claimant may seek judicial review of a denial of compensation under the Act solely in this forum. 50 U.S.C. app. § 1989b–4(h)(1)(2001). In any event, the CLA would itself qualify under the Tucker Act as a money-mandating statute, notwithstanding its explicit provision for judicial review.

Defendant also argues that jurisdiction fails for lack of standing because the Act affords no relief for governmental infringement of African–Americans' civil rights. This blurs the line between eligibility for relief—a merits consideration—and jurisdiction. The classic standing issue exists where some stranger other than Dr. Obadele and his co-plaintiffs sue on their behalf. But the fact that Dr. Obadele, Mr. Rashid, and Mr. Olusegun filed for redress and were denied relief, rightly or wrongly, makes them proper "injured" parties for purposes of standing.

Defendant attempted to clarify its position on subject matter jurisdiction:

> [I]n Plaintiffs' case, the grounds for denial of their claims, i.e., Plaintiffs were not of Japanese ancestry, was also the reason that Plaintiffs could not be claimants pursuant to the Act. Therefore, as we established in our motion to dismiss, because only a claimant could file a complaint with

> the Court the Court, pursuant to Rule 12(b)(1), lacked subject matter jurisdiction to entertain the complaint.

Def. Supp. Reply at 6.

The Government's logic is circular. The Government confuses eligibility for relief with eligibility *to seek* relief. Our function is to review *denials* of relief. Judicial review would take little of our time if we had jurisdiction only over *successful* applicants. Eligibility for relief under the statute is a

question on the merits, more appropriately resolved via a motion for judgment on the administrative record pursuant to Rule 56.1. Whether a particular claimant is entitled to redress under the statute—whether the denial of a claim is in error—is a question that we adjudge through administrative record review. *See* 50 U.S.C. app. § 1989b–4(h)(1)(Court shall review the denial upon the administrative record and set aside the denial if found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.)

The United States must live with the administrative record it created. It is too late for counsel to argue that Plaintiffs were not "claimants." The ORA—an administrative body within counsel's own organization, the Department of Justice—accepted these claims, processed them, denied them on the merits and even notified the claimants of the established procedures for appeal. *See* Letter of DeDe Greene, Administrator for Re-

dress (Feb. 5, 1999); AR at 89–91. In fact, with Dr. Obadele, the agency officials went to painstaking efforts to ensure that his application was complete. Correspondence and intra-agency worksheets appearing in the administrative record reveal that he was required to submit additional documentation such as a birth certificate, social security records and the like, in order to support his initial declaration. AR at 57—80. Whether or not they are ultimately determined eligible, Plaintiffs were "claimants" and were explicitly treated as such by the ORA.

B. Sunset Provision:

[2] Finally, Defendant argued a number of theories—mootness, failure to state a claim upon which relief can be granted, and lack of a money-mandating statute—associated with the sunset provision for compensation under the CLA. The Government argues that the unavailability of funds appropriated under the Act terminates the program and the statutory authority to award compensation; it thus deprives the Act of its money-mandating aspect and, consequently, it no longer confers jurisdiction upon this Court.

The trust fund established within the United States Treasury for restitution—the United States Civil Liberties Public Education Fund—was to terminate on August 10, 1998, ten years after the enactment of the statute, or when the appropriation was exhausted, whichever date occurred earlier. 50 U.S.C. app. § 1989b–3(d). By virtue of the 1992 amendments to the CLA, the Attorney General's duties under the Act, originally sched-

uled to cease upon termination of the Fund, end 180 days after the Fund terminates. 50 U.S.C. app. § 1989b–4(e), Pub.L.No. 102–371, § 5, 106 Stat. 1168. The Act provides that payments must be made only from the Fund created under the program. § 1989b–4(g). Therefore, goes the argument, no other source of monies can replenish the Fund and thus provide the "money-mandating" trigger for Tucker Act jurisdiction.

The Government's attack on the "money-mandating" requirement of the Tucker Act is quite irrelevant. As we have seen, the CLA provides the method by which claimants could demonstrate their entitlement to redress, and explicitly provides for judicial review rights if they were denied redress at the administrative level. This review is independent of the Tucker Act. The judicial review provision contains no termination date for our power of review. The program was open for each claimant who submitted an application prior to the statute's sunset. Once an applicant made a timely claim, as the ORA's treatment of the Plaintiffs' claims demonstrates, he or she became entitled to the procedural rights the statute established, including the right to judicial review. Our review authority persists for all timely but rejected claimants, whether that rejection came before or after "sunset."

Moreover, this "funds" argument of the Government has a number of logical weaknesses which were explored at oral argument. The Government advised the Court that the Department of Justice was re-exam-

ining this position, especially in light of issues raised in the *Murakami* litigation. However, the Department failed to advise the Court of any new position, or to respond adequately to questions posed by its theory. Since, for all the Court is aware, the Department may well have abandoned this argument, we would be justified in ignoring it. However,

at the risk of giving it more dignity than it deserves, we will devote some space to it.

We accept as true the following time-line of events: Each Plaintiff filed his initial claim with the ORA before the ten-year anniversary of the Act, although all were very close to the sunset date (Dr. Obadele on August 3, Mr. Rashid on August 4 and Mr. Olusegun on the Fund's expiration date, August 10, 1998.) Their claims were not rejected as untimely. Dr. Obadele's claim was denied days prior to the termination date; Mr. Rashid and Mr. Olusegun received letters denying their claims well after the sunset date. Dr. Obadele formally appealed through administrative channels and his appeal was processed to a decision. The administrative record is silent, but as far as we can tell from the record, Messrs. Rashid and Olusegun did not file an administrative appeal. The Government does not assert this omission as a ground for dismissal.

The Plaintiffs filed a joint complaint in this Court on February 5, 1999, several months after the termination of the original Fund and just two days before the Attorney Gen-

eral's responsibilities under the CLA were to terminate. However, later in 1999, Congress passed the 1999 Emergency Supplemental Appropriations Act, Pub.L. No. 106–31, § 3021, 113 Stat. 57 (1999). Section 3021 of the Appropriations Act gave the Attorney General the discretion to transfer up to $4.3 million in order to pay restitution to eligible individuals who filed a timely claim before the Fund expired. The Attorney General subsequently made the funds available for this purpose in September 1999. *See Murakami v. United States*, 46 Fed.Cl. 653, 654 (2000).

Thus, as we suggested earlier, a program that was apparently dead was resurrected by legislation and an administrative decision of the Attorney General. Presumably, in the Government's view, our jurisdiction over these claims, having disappeared, then magically re-appeared.

But, according to the Government, the emergency appropriations were specifically earmarked for 79 other individuals. They were awaiting documentation to support "legitimate" claims filed prior to the termination date. The new funds, the Government argues, were intended for these other individuals. Of course, if the program had indeed ended with exhaustion of the original appropriation, as the United States contends, these 79 claimants would not have been "eligible" or entitled under the program—the door would have closed to them on the sunset

date. And if the door had not closed for them because their claims were pending, would that door not also be open for our Plaintiffs and their pending claims? Is the Department of Justice arguing it can reopen an entitlement program for some applicants, but not others?

Apparently, yes. The Government quite explicitly contends that the 79 applicants whose claims are still unresolved somehow have a preferred legal status over the three other claimants whose claims are also still unresolved. Cast in jurisdictional terms, the Government necessarily argues that because the funds are available for the first group, the statute is still in force as to them, but not as to the second group.- Once again, a consequence of this logic is that judicial review is available for the claimants to whom ORA will finally award compensation, but not for those whose claims ORA will deny.

The Government was not able to satisfy the Court in *Murakami* that the technical steps necessary for obligating all the new funds had been implemented. Indeed, the Court expressed doubt whether they had actually been obligated. Of course, if it turns out that any of these intended recipients have defective claims—Voila! The money would again be "available," according to Defendant's representations at oral argument, and our jurisdiction would again attach.

Much of the Government's argument regarding subject-matter jurisdiction is premised on the assumption that our CLA jurisdiction stems from the Tucker Act. Focusing

again on the exhaustion of the Fund, the government contends the Act then ceased to be money-mandating. Even were we to assume that this Court's authority for judicial review at any particular moment was dependent on the actual presence of money in the Fund at that moment—a view we reject—the

Congressional replenishment served to restore that jurisdiction for all pending claimants, the 79 and the 3.

In a corollary attack on the Tucker Act's money-mandating requirement, the Defendant contends that the Court is divested of Tucker Act jurisdiction due to the apparent discretion afforded the Attorney General as to whether to reprogram funds under the Emergency Supplemental Appropriations Act of 1999. The 1999 supplemental appropriation authorized the Attorney General to use her discretion as to whether to replenish the Fund. Once she acted, her discretion ended. Henceforth the payment of supplemental appropriations fell under the concededly money-mandating provisions of the CLA.

Each of Defendant's fiscal/jurisdiction arguments were carefully considered and rejected by Judge Allegra's opinion in *Murakami*, 46 Fed.Cl. at 655–60; *see also, Odow v. United States*, 51 Fed.Cl. 425, 431–32 (2001). We do not wish to retread the "labyrinthine and tortuous" route so expertly navigated by that decision. *Murakami*, 46 Fed.Cl. at 656. Suffice it to say, we allowed the Government

ample opportunity to convince us that *Murakami* was wrongly decided. They did not even try.

II. Judgment on the Administrative Record

We turn now to the merits of this case. The Defendant has filed a motion for judgment on the administrative record pursuant to Rule 56.1. When such a motion is made we apply the same standards as for motions for summary judgment. The Court will grant such a motion where there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law. RCFC 56(c). Inferences drawn from the evidence, in this case the administrative record, are viewed in the light most favorable to the party opposing summary judgment. *See Cincom Systems, Inc. v. United States*, 37 Fed.Cl. 663, 670 (1997). We review the denial of Plaintiffs' claims upon the administrative record and hold unlawful and set aside the denial if it is found to be arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law. 50 U.S.C. app. § 1989b–4(h)(1). The denial of Plaintiffs' claims and appeals at the Department of Justice survives review under this standard.

As we have stated, the Attorney General is responsible for identifying individuals who qualify for relief and paying them restitution. *See generally*, 50 U.S.C. app. §§ 1989b–4(a). To this end, the ORA was established in the Civil Rights Division of the Department of

Justice to administer the program, and to review and approve those claims upon receipt of confirming background information.

This legislation was intended, in part, to recognize "the fundamental injustice of the evacuation, relocation, and internment of United States citizens and permanent resident aliens of Japanese ancestry during WWII." 50 U.S.C. app. § 1989(1). Under the circumstances, the record reveals no evidence of bad faith by the ORA and clearly demonstrates a reasonable and constitutional basis for denial of the Plaintiffs' claims.

These claimants clearly are not entitled to reparations under the statute, *as enacted*. Of course, strict observance of statutory requirements does not ensure that the agency has acted in accordance with law. The actions of agency officials here are only as legitimate as the statute that they followed. Plaintiffs allege that the ORA's denial of their claims on the grounds that they were not of Japanese descent—a basis explicitly authorized and required by the statute and implementing regulations—violates the equal protection clause and the due process clause of the Fourteenth and the Fifth Amendments, respectively.

In connection with this constitutional question, we note that the Government has suggested we lack jurisdiction to decide constitutional issues. Our jurisdiction is preempted in situations where Congress has provided a comprehensive remedy elsewhere. *United*

States v. Fausto, 484 U.S. 439, 454–55, 108 S.Ct. 668, 98 L.Ed.2d 830 (1988) (Tucker Act jurisdiction over claim for back pay not appropriate given procedures established under Civil Service Reform Act); *see also Lee v. United States*, 33 Fed.Cl. 374, 380 (1995).

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[3] The Court's jurisdiction does not ordinarily extend to claims based upon violations of the equal protection clause of the Constitution. *Bounds v. United States*, 1 Cl.Ct. 215, *aff'd without op.*, 723 F.2d 68 (Fed.Cir. 1983). However, once this Court's jurisdiction over a case is established, there is no restriction on our ability to review equal protection, due process or other constitutional claims. *See Terran v. Sec'y of Dept. Of Health and Human Services*, 195 F.3d 1302, 1309–10 (Fed.Cir.1999)(although COFC ordinarily does not possess jurisdiction to entertain constitutional claims such as due process and equal protection, where COFC has proper jurisdiction over the complaint in the first instance, the Court may consider constitutional claims). As in Vaccine Act cases, the statutory jurisdictional basis in *Terran*, review of the denial of a claim before the ORA is a matter over which we have exclusive jurisdiction. 50 U.S.C. app. § 1989b–4(h)(1).

[4] The Fourteenth Amendment to the Constitution provides: "No state shall ... deny to any person within its jurisdiction the equal protection of the laws." The prohibition applies with equal force to the Federal Government by virtue of the Fifth Amend-

ment's due process clause. *Bolling v. Sharpe*, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954); *Buckley v. Valeo*, 424 U.S. 1, 93, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). Legislation inevitably benefits certain persons to the exclusion of others. But such classifications are not necessarily unconstitutional. Equal protection analysis turns on the type of classifications within a statutory scheme. Those classifications which are race-neutral are subject to more relaxed judicial scrutiny, whereas classifications based on race or national origin are subject to strict scrutiny: They must be a necessary and finely tuned means of fulfilling a compelling governmental interest. *See Wygant v. Jackson Board of Education*, 476 U.S. 267, 274, 106 S.Ct. 1842, 90 L.Ed.2d 260 (1986).

[5] Some may think it odd that a Court must justify under equal protection a measure such as the Civil Liberties Act of 1988 that is designed to redress the Government's constitutional wrongs against a racial class of individuals. Ironically, early equal protection *challenges* to the wartime measures taken against Japanese Americans were afforded less judicial scrutiny than that now required to *sustain* the remedial actions involved here. *See, e.g., Hirabayashi v. United States*, 320 U.S. 81, 102, 63 S.Ct. 1375, 87 L.Ed. 1774 (1943)(upheld curfews under rational basis standard). The constitutional sanction afforded those wartime actions by the Supreme Court is but one element of the wrongs that this statute is designed to atone. *See Adarand Constr., Inc. v. Pena*, 515 U.S. 200, 215 n. *, 115 S.Ct. 2097, 132 L.Ed.2d 158 (1995)(noting that Congress had recently agreed with the dissenters' position

in *Korematsu v. United States*, 323 U.S. 214, 65 S.Ct. 193, 89 L.Ed. 194 (1944)(upholding exclusion of persons of Japanese ancestry from certain areas) by enacting the Civil Liberties Act of 1988); *see also*, 50 U.S.C. app. § 1989a(a) ("The Congress recognizes that ... a grave injustice was done to both citizens and permanent resident aliens of Japanese ancestry by the evacuation, relocation, and internment of civilians during World war II ... [T]hese actions were carried out without adequate security reasons and without any acts of espionage or sabotage documented by the Commission, and were motivated largely by racial prejudice, wartime hysteria, and a failure of political leadership.") One may understand—although never condone—the tendency to infringe the liberties of Americans in the name of domestic security in the midst of a crisis atmosphere.

Half a century of equal protection jurisprudence has confirmed the error of that wartime judicial abdication. It has, to be specific, reversed the convictions of Mr. Hirabayashi, Mr. Korematsu and other victims of what was belatedly admitted to be racial prejudice. *Korematsu v. United States*, 584 F.Supp. 1406 (N.D.Cal.1984); *Hirabayashi v. United States*, 627 F.Supp. 1445 (W.D.Wash. 1986), *aff'd in part and rev'd in part*, 828 F.2d 591 (9th Cir.1987).

Time has also shown us that racial classifications that purport to confer benefits on a class of persons must be scrutinized carefully. That should be obvious—a beneficial inclusion of one class on the basis of race also

constitutes exclusion of others on the basis of race. See *Adarand*, 515 U.S. at 241 n. *, 115 S.Ct. 2097 (Justice Thomas, concurring)("It should be obvious that every racial classification helps, in a narrow sense, some races and hurts others. As to the races benefitted, the classification could surely be called 'benign.' ")(citing *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 295, n. 35, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978)). That is the core of Dr. Obadele's contention.

Make no mistake, the Plaintiffs have made a powerful case for redress as representatives of a racial group other than Americans of Japanese ancestry. The treatment of African–Americans who were enslaved, oppressed, and disenfranchised is a long and deplorable chapter in this nation's history. Their plight may well be the subject of future legislation providing for reparations for slavery. In fact, the Court is aware that several initiatives have garnered substantial public support. Representative John Conyers (D–MI) has sponsored legislation in every Congress since January 1989 to establish the Commission to Study Reparations Proposals for African–Americans, a commission not unlike that which preceded the enactment of the CLA. Pub.L. No. 96–317, §§ 2, 4, 94 Stat. 964, 965 (1980); *see generally*, Jeffrey Ghannam, *Repairing the Past*, ABA JOURNAL, Nov. 2000, 39; *see also*, Paul Shepard, *Group to Seek Slavery Reparations*, WASH. POST, Nov. 5, 2000, at A11. Some have opted not to wait for legislation. *See* Glenn Kessler, *IRS Paid $30 Million In Credits For Slavery*,

WASH. POST, Apr. 13, 2002, at A1 (Internal Revenue Service has paid erroneous refunds for 2000 and 2001 based upon tax returns seeking nonexistent "slavery tax credits.")

Commentators making the case for reparations have, at the same time, forecast the quagmire of difficulties necessarily involved in fashioning the particulars of any such reparations. *See e.g.*, ALFRED L. BROPHY, RECONSTRUCTING THE DREAMLAND 103 (2002)("There are, for example, questions about how to apportion the limited public funds that are available. We cannot possibly compensate for each wrong done in the past. So the question becomes, who has the most compelling claim on the public treasury.")(footnote omitted).

If and when reparations legislation passes, it too will be susceptible to attack on equal protection grounds unless narrowly tailored to redress the undeniably legitimate concerns that Dr. Obadele and his co-plaintiffs have raised. Another group, residents of the Aleutian and Pribilof Islands, also received redress in contemporaneous legislation. *See* Aleutian and Pribilof Islands Restitution Act, 50 U.S.C. app. § 1989c, Pub.L. No. 100–383, Title II, §§ 201–209 (Aug. 10, 1988), 102 Stat. 911 (West 1990). There are, unfortunately, a number of other groups which can make a case for redress of wrongs done them on the basis of political, religious, ethnic, or racial discrimination. For a treatment of the unhappy aspects of American history see Howard Zinn, A PEOPLES HISTORY OF THE UNITED STATES (The New Press 1980).

Federal district courts and presumably this Court as well, faced with a statute that does not withstand an equal protection challenge, may either declare the statute a nullity or may eliminate the offending classification to permit the Plaintiff to qualify. *See Jacobs v. Barr*, 959 F.2d 313, 317 (D.C.Cir.)(citing *Heckler v. Mathews*, 465 U.S. 728, 738–39, 104 S.Ct. 1387, 79 L.Ed.2d 646 (1984) and *Califano v. Westcott*, 443 U.S. 76, 89–91, 99 S.Ct. 2655, 61 L.Ed.2d 382 (1979)). Plaintiffs seek the latter remedy. In this forum, the Plaintiffs must make a legal case, which is far different from the political case they would make to Congress. We turn now to the Plaintiffs' legal case, and we are compelled to say they have not persuaded us. Consequently, we need not concern ourselves with the proper remedy.

In *Adarand*, the Supreme Court addressed "benign" or "remedial" racial classifications in the context of federal contracting programs benefitting small business concerns owned by socially and economically disadvantaged individuals. 515 U.S. at 205–212, 115 S.Ct. 2097. Eligibility under the programs was in part based upon racial presumptions. Tracing the history of its review of remedial race-based governmental actions, the Court reached a consensus on the appropriate level of constitutional analysis and confirmed that

all race-based classifications, by any level of government, must survive strict scrutiny. *Id.* at 227, 115 S.Ct. 2097.

The CLA is an example of a "remedial" race-conscious measure—it provides for the administration of a Fund to compensate those of *Japanese ancestry* for injustices re-

sulting from the evacuation, relocation and internment of civilians in the United States during World War II. Therefore, the race-based eligibility guidelines of the ORA "are constitutional only if they are narrowly tailored measures that further compelling governmental interests." *Id.* In applying this standard, the Court must find a factual basis for the conduct being compensated. *See id.* at 229, 115 S.Ct. 2097 ('Unless Congress clearly articulates the need and basis for a racial classification, and also tailors the classification to its justification, the Court should not uphold this kind of statute.')(quoting *Fullilove v. Klutznick*, 448 U.S. 448, 545, 100 S.Ct. 2758, 65 L.Ed.2d 902 (1980)). Other factors implicated by strict scrutiny include whether the government considered the use of race-neutral means that serve the same interest. *Id.* at 237–38, 115 S.Ct. 2097 (citing *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 507, 109 S.Ct. 706, 102 L.Ed.2d 854 (1989)), and whether the program was appropriately limited so that "it will not last longer than the discriminatory effects it is designed to eliminate." *See id.* (citation omitted).

As the ORA observed in acting on Dr. Obadele's claim, the CLA has already survived constitutional attack. In *Jacobs v. Barr*, 959 F.2d 313 (D.C.Cir.), *cert. denied*, 506 U.S. 831, 113 S.Ct. 95, 121 L.Ed.2d 56 (1992), an American of German ancestry challenged the redress program on equal protection grounds. The Plaintiff had been interned during WWII but was denied a redress payment because he was not of Japanese ancestry.

The Court of Appeals for the D.C. Circuit upheld the Act. Although the case pre-dated *Adarand's* mandate to extend strict scrutiny to remedial racial classifications, the Court concluded that the CLA survives even this highest level of analysis. *Id.* at 318. It then went on to apply the heightened scrutiny "for demonstrative purposes" and held:

> Congress's finding that Japanese–Americans were the victims of prejudice ... is amply supported by historical evidence that the internment policy extended to Japanese American but not to German–American children. Congress, therefore, had clear and sufficient reason to compensate interns of Japanese but not German descent; and the compensation is ... *narrowly tailored* to Congress's *compelling interest* in redressing a shameful example of national discrimination.

Id. at 321–22 (emphasis added). As the Court noted, the Act was aimed at specific governmental actions as opposed to discrimination in general. Persons of Japanese descent who suffered hardship because of governmental action were denied redress payments if their injuries were "not related to any evacuation, internment or relocation program, as required for redress under the Civil Liberties Act." *Kaneko v. United States*, 122 F.3d 1048, 1053 (Fed.Cir.1997).

Plaintiffs fail to explain why we should not be persuaded by the D.C. Circuit's finding of a compelling governmental interest. Nor do they propose that there is any way to compensate the victims of the wartime emergency actions through a less discriminatory al-

ternative. *Wygant*, 476 U.S. at 280 n. 6, 106 S.Ct. 1842. And unlike Mr. Jacobs, they do not challenge the amply supported facts showing the racial motivation and impact of the internment policy. See 50 U.S.C. app. § 1989a. Instead, they condemn "racial politics" and allege simply: "The Act was not attempting to further a compelling governmental [interest] but was a concession to public and political pressure." Although uttered as epithets, the Plaintiffs are really only saying that the victims and heirs of one historical wrong have succeeded in persuading the public and Congress of their entitlement to redress, whereas Dr. Obadele and like-minded advocates are in the process of trying to achieve that same result for another historical wrong.

The D.C. Circuit's analysis and conclusions satisfy the later-articulated tests of the Supreme Court in *Adarand*, and we are persuaded that the Court came to the correct result. We therefore reject Plaintiffs' claim that the ORA denial of their applications was contrary to law because it relied on a consti-

tutionally-defective racial classification. The decision of the ORA is affirmed.

CONCLUSION

The Government's motion to dismiss, based upon lack of subject-matter jurisdiction and failure to state a claim upon which relief can be granted, is DENIED. Upon exercising our jurisdiction to review the record in this matter, we find the decision of the ORA in denying Plaintiffs' claims for restitu-

tion under the Civil Liberties Act of 1988 is supported by the administrative record, and is not arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law. Accordingly, Defendant's motion for judgment upon the administrative record is GRANTED.

The Clerk of Court is directed to dismiss the complaint of the three Plaintiffs in this action and enter judgment in favor of the Government. Each party shall bear its own costs.

IT IS SO ORDERED.

U.S. Department of Justice

Civil Rights Division

Office of Redress Administration

Office of the Administrator

P.O. Box 66260
Washington, DC 20035-6260

FEB 5 1999

[Copy of this Letter by Petitioner]

Imari Obadele, Ph.D.
11800 Grant Road #5107
Cypress, Texas 77429

Dear Dr. Obadele:

On August 10, 1988, the United States Congress enacted the Civil Liberties Act of 1988 (the Act). As you know, the Act provides monetary redress to eligible persons of Japanese ancestry who were evacuated, relocated or interned during World War II as a result of actions taken by, or on behalf of, the United States Government. The Office of Redress Administration (ORA) has received your claim for redress compensation under [Sec] 108 of the Act. After a thorough investigation of your case, ORA has determined that you are ineligible for redress pursuant to the Act and its regulation

Pursuant to [Sec.] 1989b-7(2) of the Act and 28 C.F.R [Sec.]74.3 (a)(4)(i) and (iii) (the regulations enforcing the Act), an individual is eligible if such an individual was confined, held in custody, relocated, or otherwise deprived of liberty or property as a result of a specific federal government action relating to Executive Order 9066 or similar government action respecting the evacuation, relocation or internment of individuals solely on the basis of Japanese ancestry (50 U.S.C. app [Sec] 1989). One of the threshold criteria of the Act requires that an individual be of Japanese ancestry, or the spouse or parent of an individual of Japanese ancestry. Section 1989b-7 of the Act states:

> (2) the term "eligible individual" means any individual of Japanese ancestry, or the spouse or parent of an individual of Japanese ancestry ....

In support of your claim, you submitted a declaration under oath as well as several written statements and supporting documentation indicating that you are of "Afrikan" ancestry. Based on a review of your file, you have clearly indicated that you are not of Japanese ancestry. Further, you have not submitted any additional documentation of proof of Japanese ancestry. Nor have you claimed or submitted proof that you were the spouse or parent of an individual of Japanese ancestry and were evacuated, relocated or interned with your spouse or parent as a result of specific Federal government action as set frth in the Act. You have claimed various types of deprivations; however, none of your losses were as a result of Executive Order 9066 or any other related Federal government action. Thus, any deprivations sustained by you are not losses covered by the Act because your losses were not Federal government action "respecting the evacuation, relocation,

and internment" program. Nor was it Federal government action based solely on Japanese ancestry. Accordingly, and pursuant to the restrictive language of the Act and the regulations enforcing the Act, we must conclude that you are not eligible to receive compensation.

Should you wish to appeal this decision, please fill out, sign and mail the enclosed "Notice of Appeal" form to:

Assistant Attorney General
Civil Rights Division,
U.S. Department of Justice
P.O. Box 65808,
Washington, D.C. 20035-5808.

Attn: Redress Appeal

The Department's regulations allow a claimant 60 days within receipt of this letter to file an appeal under the Act. However the redress program expires on February 5, 1999, which is in less than 60 days. Accordingly, any appeal should be filed as soon as possible. Failure to file a prompt appeal may bar administrative review of you case on the merits because appeals will not be considered after February 5, 1999.

You can submit a statement indicating why you believe you are eligible for redress with your notice of appeal. You may also include any additional information or documentation that you believe supports your statement with your notice. However, all papers that you already submitted to ORA will be considered in your appeal, and you do not need to submit a statement or documentation in addition to the Notice of Appeal form in order for your appeal to be reviewed.

Upon receipt of your notice of appeal, the Chief of the Appellate Section of the Civil Rights Division will undertake an independent review of your case. If he finds you are eligible, you will be contacted in writing. If, on the other hand, he affirms ORA's determination of ineligibility, you will be notified in writing of the reasons and be told about procedures for taking your case to federal court.

We have also included a form that will enable you to request a copy of your case file under the Freedom of Information Act. The case file contains the documents you supplied and other material relied upon by ORA for this decision.. If you choose to appeal, your entire case file will automatically be made available to the Chief of the Appellate Section, so it is not necessary to submit this form in order to pursue your appeal. Requesting your case file does not extend the time for filing an appeal. Further, your request for your case fie will not delay the Appellate Section's review of your appeal. If you wish to obtain a copy of your case file, however, you may include the form along with your notice of appeal.

If you decide you want to appeal under the Act, please remember that time is running short. The Chief of the Appellate Section loses authority to decide appeals on the merits after February 5, 1999, due to the end of the program. In order to give each appeal the attention it deserves, you should act as quickly as possible.

Sincerely,

(Signed)

DeDe Greene
Administrator for Redress

Enclosure

The Civil Liberties Act of 1988

Followed by

The Act's 1992 Amendments

Public Law 100-383
100th Congress

An Act

To implement recommendations of the Commission on Wartime Relocation and Internment of Civilians.

Aug. 10, 1988
[H.R. 442]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Human rights.

SECTION 1. PURPOSES.

50 USC app. 1989.

The purposes of this Act are to—

(1) acknowledge the fundamental injustice of the evacuation, relocation, and internment of United States citizens and permanent resident aliens of Japanese ancestry during World War II;

(2) apologize on behalf of the people of the United States for the evacuation, relocation, and internment of such citizens and permanent resident aliens;

(3) provide for a public education fund to finance efforts to inform the public about the internment of such individuals so as to prevent the recurrence of any similar event;

Public information.

(4) make restitution to those individuals of Japanese ancestry who were interned;

(5) make restitution to Aleut residents of the Pribilof Islands and the Aleutian Islands west of Unimak Island, in settlement of United States obligations in equity and at law, for—

(A) injustices suffered and unreasonable hardships endured while those Aleut residents were under United States control during World War II;

(B) personal property taken or destroyed by United States forces during World War II;

Real property.

(C) community property, including community church property, taken or destroyed by United States forces during World War II; and

(D) traditional village lands on Attu Island not rehabilitated after World War II for Aleut occupation or other productive use;

(6) discourage the occurrence of similar injustices and violations of civil liberties in the future; and

(7) make more credible and sincere any declaration of concern by the United States over violations of human rights committed by other nations.

SEC. 2. STATEMENT OF THE CONGRESS.

50 USC app. 1989a.

(a) WITH REGARD TO INDIVIDUALS OF JAPANESE ANCESTRY.—The Congress recognizes that, as described by the Commission on Wartime Relocation and Internment of Civilians, a grave injustice was done to both citizens and permanent resident aliens of Japanese ancestry by the evacuation, relocation, and internment of civilians during World War II. As the Commission documents, these actions were carried out without adequate security reasons and without any acts of espionage or sabotage documented by the Commission, and were motivated largely by racial prejudice, wartime hysteria, and a

failure of political leadership. The excluded individuals of Japanese ancestry suffered enormous damages, both material and intangible, and there were incalculable losses in education and job training, all of which resulted in significant human suffering for which appropriate compensation has not been made. For these fundamental violations of the basic civil liberties and constitutional rights of these individuals of Japanese ancestry, the Congress apologizes on behalf of the Nation...

(b) WITH RESPECT TO THE ALEUTS.—The Congress recognizes that, as described by the Commission on Wartime Relocation and Internment of Civilians, the Aleut civilian residents of the Pribilof Islands and the Aleutian Islands west of Unimak Island were relocated during World War II to temporary camps in isolated regions of southeast Alaska where they remained, under United States control and in the care of the United States, until long after any potential danger to their home villages had passed. The United States failed to provide reasonable care for the Aleuts, and this resulted in widespread illness, disease, and death among the residents of the camps; and the United States further failed to protect Aleut personal and community property while such property was in its possession or under its control. The United States has not compensated the Aleuts adequately for the conversion or destruction of personal property, and the conversion or destruction of community property caused by the United States military occupation of Aleut villages during World War II. There is no remedy for injustices suffered by the Aleuts during World War II except an Act of Congress providing appropriate compensation for those losses which are attributable to the conduct of United States forces and other officials and employees of the United States.

Civil Liberties Act of 1988.

TITLE I—UNITED STATES CITIZENS OF JAPANESE ANCESTRY AND RESIDENT JAPANESE ALIENS

50 USC app. 1989b.

SEC 101. SHORT TITLE.

This title may be cited as the "Civil Liberties Act of 1988".

50 USC app. 1989b-1.

SEC. 102. REMEDIES WITH RESPECT TO CRIMINAL CONVICTIONS.

(a) REVIEW OF CONVICTIONS.—The Attorney General is requested to review any case in which an individual living on the date of the enactment of this Act was, while a United States citizen or permanent resident alien of Japanese ancestry, convicted of a violation of—

(1) Executive Order Numbered 9066, dated February 19, 1942;

(2) the Act entitled "An Act to provide a penalty for violation of restrictions or orders with respect to persons entering,

remaining in, leaving, or committing any act in military areas or zones", approved March 21, 1942 (56 Stat. 173); or

(3) any other Executive order, Presidential proclamation, law of the United States, directive of the Armed Forces of the United States, or other action taken by or on behalf of the United States or its agents, representatives, officers, or employees, respecting the evacuation, relocation, or internment of individuals solely on the basis of Japanese ancestry;

on account of the refusal by such individual, during the evacuation, relocation, and internment period, to accept treatment which discriminated against the individual on the basis of the individual's Japanese ancestry.

(b) RECOMMENDATIONS FOR PARDONS.—Based upon any review under subsection (a), the Attorney General is requested to recommend to the President for pardon consideration those convictions which the Attorney General considers appropriate.

(c) ACTION BY THE PRESIDENT.—In consideration of the statement of the Congress set forth in section 2(a), the President is requested to offer pardons to any individuals recommended by the Attorney General under subsection (b).

SEC. 103. CONSIDERATION OF COMMISSION FINDINGS BY DEPARTMENTS AND AGENCIES. 50 USC app. 1989b–2.

(a) REVIEW OF APPLICATIONS BY ELIGIBLE INDIVIDUALS.—Each department and agency of the United States Government shall review with liberality, giving full consideration to the findings of the Commission and the statement of the Congress set forth in section 2(a), any application by an eligible individual for the restitution of any position, status, or entitlement lost in whole or in part because of any discriminatory act of the United States Government against such individual which was based upon the individual's Japanese ancestry and which occurred during the evacuation, relocation, and internment period.

(b) NO NEW AUTHORITY CREATED.—Subsection (a) does not create any authority to grant restitution described in that subsection, or establish any eligibility to apply for such restitution.

SEC. 104. TRUST FUND. 50 USC app. 1989b–3.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States the Civil Liberties Public Education Fund, which shall be administered by the Secretary of the Treasury.

(b) INVESTMENT OF AMOUNTS IN THE FUND.—Amounts in the Fund shall be invested in accordance with section 9702 of title 31, United States Code.

(c) USES OF THE FUND.—Amounts in the Fund shall be available only for disbursement by the Attorney General under section 105 and by the Board under section 106.

(d) TERMINATION.—The Fund shall terminate not later than the earlier of the date on which an amount has been expended from the

Fund which is equal to the amount authorized to be appropriated to the Fund by subsection (e), and any income earned on such amount, or 10 years after the date of the enactment of this Act. If all of the amounts in the Fund have not been expended by the end of that 10-year period, investments of amounts in the Fund shall be liquidated and receipts thereof deposited in the Fund and all funds remaining in the Fund shall be deposited in the miscellaneous receipts account in the Treasury.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Fund $1,250,000,000, of which not more than $500,000,000 may be appropriated for any fiscal year. Any amounts appropriated pursuant to this section are authorized to remain available until expended.

SEC. 105. RESTITUTION.

50 USC app. 1989b–4.

(a) LOCATION AND PAYMENT OF ELIGIBLE INDIVIDUALS.—

(1) IN GENERAL.—Subject to paragraph (6), the Attorney General shall, subject to the availability of funds appropriated to the Fund for such purpose, pay out of the Fund to each eligible individual the sum of $20,000, unless such individual refuses, in the manner described in paragraph (4), to accept the payment.

(2) LOCATION OF ELIGIBLE INDIVIDUALS.—The Attorney General shall identify and locate, without requiring any application for payment and using records already in the possession of the United States Government, each eligible individual. The Attorney General should use funds and resources available to the Attorney General, including those described in subsection (c), to attempt to complete such identification and location within 12 months after the date of the enactment of this Act. Any eligible individual may notify the Attorney General that such individual is an eligible individual, and may provide documentation therefor. The Attorney General shall designate an officer or employee to whom such notification and documentation may be sent, shall maintain a list of all individuals who submit such notification and documentation, and shall, subject to the availability of funds appropriated for such purpose, encourage, through a public awareness campaign, each eligible individual to submit his or her current address to such officer or employee. To the extent that resources referred to in the second sentence of this paragraph are not sufficient to complete the identification and location of all eligible individuals, there are authorized to be appropriated such sums as may be necessary for such

Records. Public information.

Appropriation authorization.

purpose. In any case, the identification and location of all eligible individuals shall be completed within 12 months after the appropriation of funds under the preceding sentence. Failure to be identified and located by the end of the 12-month period specified in the preceding sentence shall not preclude an eligible individual from receiving payment under this section.

(3) NOTICE FROM THE ATTORNEY GENERAL.—The Attorney General shall, when funds are appropriated to the Fund for payments to an eligible individual under this section, notify that eligible individual in writing of his or her eligibility for payment under this section. Such notice shall inform the eligible individual that—

(A) acceptance of payment under this section shall be in full satisfaction of all claims against the United States arising out of acts described in section 108(2)(B), and

(B) each eligible individual who does not refuse, in the manner described in paragraph (4), to accept payment under this section within 18 months after receiving such written notice shall be deemed to have accepted payment for purposes of paragraph (5).

(4) EFFECT OF REFUSAL TO ACCEPT PAYMENT.—If an eligible individual refuses, in a written document filed with the Attorney General, to accept any payment under this section, the amount of such payment shall remain in the Fund and no payment may be made under this section to such individual at any time after such refusal.

(5) PAYMENT IN FULL SETTLEMENT OF CLAIMS AGAINST THE UNITED STATES.—The acceptance of payment by an eligible individual under this section shall be in full satisfaction of all claims against the United States arising out of acts described in section 108(2)(B). This paragraph shall apply to any eligible

Claims.

individual who does not refuse, in the manner described in paragraph (4), to accept payment under this section within 18 months after receiving the notification from the Attorney General referred to in paragraph (3).

(6) EXCLUSION OF CERTAIN INDIVIDUALS.—No payment may be made under this section to any individual who, after September 1, 1987, accepts payment pursuant to an award of a final judgment or a settlement on a claim against the United States for acts described in section 108(2)(B), or to any surviving spouse, child, or parent of such individual to whom paragraph (6) applies.

Claims.

) PAYMENTS IN THE CASE OF DECEASED PERSONS.—(A) In the e of an eligible individual who is deceased at the time of ment under this section, such payment shall be made only ollows:

(i) If the eligible individual is survived by a spouse who is living at the time of payment, such payment shall be made to such surviving spouse.

(ii) If there is no surviving spouse described in clause (i), such payment shall be made in equal shares to all children of the eligible individual who are living at the time of payment.

(iii) If there is no surviving spouse described in clause (i) and if there are no children described in clause (ii), such payment shall be made in equal shares to the parents of the eligible individual who are living at the time of payment.

If there is no surviving spouse, children, or parents described in clauses (i), (ii), and (iii), the amount of such payment shall remain in the Fund, and may be used only for the purposes set forth in section 106(b).

(B) After the death of an eligible individual, this subsection and subsections (c) and (f) shall apply to the individual or individuals specified in subparagraph (A) to whom payment under this section will be made, to the same extent as such subsections apply to the eligible individual.

(C) For purposes of this paragraph—

(i) the "spouse" of an eligible individual means a wife or husband of an eligible individual who was married to that eligible individual for at least 1 year immediately before the death of the eligible individual;

(ii) a "child" of an eligible individual includes a recognized natural child, a stepchild who lived with the eligible individual in a regular parent-child relationship, and an adopted child; and

(iii) a "parent" of an eligible individual includes fathers and mothers through adoption.

(b) ORDER OF PAYMENTS.—The Attorney General shall endeavor to make payments under this section to eligible individuals in the order of date of birth (with the oldest individual on the date of the enactment of this Act (or, if applicable, that individual's survivors under paragraph (6)) receiving full payment first), until all eligible individuals have received payment in full.

(c) RESOURCES FOR LOCATING ELIGIBLE INDIVIDUALS.—In attempting to locate any eligible individual, the Attorney General may use any facility or resource of any public or nonprofit organization or any other record, document, or information that may be made available to the Attorney General.

(d) ADMINISTRATIVE COSTS NOT PAID FROM THE FUND.—No costs incurred by the Attorney General in carrying out this section shall be paid from the Fund or set off against, or otherwise deducted from, any payment under this section to any eligible individual.

(e) TERMINATION OF DUTIES OF ATTORNEY GENERAL.—The duties of the Attorney General under this section shall cease when the Fund terminates.

(f) CLARIFICATION OF TREATMENT OF PAYMENTS UNDER OTHER LAWS.—Amounts paid to an eligible individual under this section—

(1) shall be treated for purposes of the internal revenue laws of the United States as damages for human suffering; and

(2) shall not be included as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits.

SEC. 106. BOARD OF DIRECTORS OF THE FUND. 50 USC app. 1989b-5.

(a) ESTABLISHMENT.—There is established the Civil Liberties Public Education Fund Board of Directors, which shall be responsible for making disbursements from the Fund in the manner provided in this section.

(b) USES OF FUND.—The Board may make disbursements from the Fund only—

(1) to sponsor research and public educational activities, and to publish and distribute the hearings, findings, and recommendations of the Commission, so that the events surrounding the evacuation, relocation, and internment of United States citizens and permanent resident aliens of Japanese ancestry will be remembered, and so that the causes and circumstances of this and similar events may be illuminated and understood; and Research and development. Education. Public information.

(2) for reasonable administrative expenses of the Board, including expenses incurred under subsections (c)(3), (d), and (e).

(c) MEMBERSHIP.—

(1) APPOINTMENT.—The Board shall be composed of 9 members appointed by the President, by and with the advice and consent of the Senate, from individuals who are not officers or employees of the United States Government.

(2) TERMS.—(A) Except as provided in subparagraphs (B) and (C), members shall be appointed for terms of 3 years.

(B) Of the members first appointed—

(i) 5 shall be appointed for terms of 3 years, and

(ii) 4 shall be appointed for terms of 2 years,

as designated by the President at the time of appointment.

(C) Any member appointed to fill a vacancy occurring before the expiration of the term for which such member's predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of such member's term until such member's successor has taken office. No individual may be appointed as a member for more than 2 consecutive terms.

(3) COMPENSATION.—Members of the Board shall serve without pay, except that members of the Board shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions of the Board, in the same manner as persons employed intermittently

in the United States Government are allowed expenses under section 5703 of title 5, United States Code.

(4) QUORUM.—5 members of the Board shall constitute a quorum but a lesser number may hold hearings.

(5) CHAIR.—The Chair of the Board shall be elected by the members of the Board.

(d) DIRECTOR AND STAFF.—

(1) DIRECTOR.—The Board shall have a Director who shall be appointed by the Board.

(2) ADDITIONAL STAFF.—The Board may appoint and fix the pay of such additional staff as it may require.

(3) APPLICABILITY OF CIVIL SERVICE LAWS.—The Director and the additional staff of the Board may be appointed without regard to section 5311(b) of title 5, United States Code, and without regard to the provisions of such title governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that the compensation of any employee of the Board may not exceed a rate equivalent to the minimum rate of basic pay payable for GS-18 of the General Schedule under section 5332(a) of such title.

(e) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Board on a reimbursable basis such administrative support services as the Board may request.

(f) GIFTS AND DONATIONS.—The Board may accept, use, and dispose of gifts or donations of services or property for purposes authorized under subsection (b).

(g) ANNUAL REPORTS.—Not later than 12 months after the first meeting of the Board and every 12 months thereafter, the Board shall transmit to the President and to each House of the Congress a report describing the activities of the Board.

(h) TERMINATION.—90 days after the termination of the Fund, the Board shall terminate and all obligations of the Board under this section shall cease.

SEC. 107. DOCUMENTS RELATING TO THE INTERNMENT.

50 USC app. 1989b–6.

(a) PRESERVATION OF DOCUMENTS IN NATIONAL ARCHIVES.—All documents, personal testimony, and other records created or received by the Commission during its inquiry shall be kept and maintained by the Archivist of the United States who shall preserve such documents, testimony, and records in the National Archives of the United States. The Archivist shall make such documents, testimony, and records available to the public for research purposes.

Public information.

(b) PUBLIC AVAILABILITY OF CERTAIN RECORDS OF THE HOUSE OF REPRESENTATIVES.—(1) The Clerk of the House of Representatives is authorized to permit the Archivist of the United States to make available for use records of the House not classified for national security purposes, which have been in existence for not less than thirty years, relating to the evacuation, relocation, and internment of individuals during the evacuation, relocation, and internment period.

(2) This subsection is enacted as an exercise of the rulemaking power of the House of Representatives, but is applicable only with respect to the availability of records to which it applies, and supersedes other rules only to the extent that the time limitation established by this section with respect to such records is specifically

inconsistent with such rules, and is enacted with full recognition of the constitutional right of the House to change its rules at any time, in the same manner and to the same extent as in the case of any other rule of the House.

SEC. 108. DEFINITIONS.

50 USC app. 1989b–7.

For the purposes of this title—

(1) the term "evacuation, relocation, and internment period" means that period beginning on December 7, 1941, and ending on June 30, 1946;

(2) the term "eligible individual" means any individual of Japanese ancestry who is living on the date of the enactment of this Act and who, during the evacuation, relocation, and internment period—

(A) was a United States citizen or a permanent resident alien; and

(B)(i) was confined, held in custody, relocated, or otherwise deprived of liberty or property as a result of—

(I) Executive Order Numbered 9066, dated February 19, 1942;

(II) the Act entitled "An Act to provide a penalty for violation of restrictions or orders with respect to persons entering, remaining in, leaving, or committing any act in military areas or zones", approved March 21, 1942 (56 Stat. 173); or

(III) any other Executive order, Presidential proclamation, law of the United States, directive of the Armed Forces of the United States, or other action taken by or on behalf of the United States or its agents, representatives, officers, or employees, respecting the evacuation, relocation, or internment of individuals solely on the basis of Japanese ancestry; or

(ii) was enrolled on the records of the United States Government during the period beginning on December 7, 1941, and ending on June 30, 1946, as being in a prohibited military zone;

except that the term "eligible individual" does not include any individual who, during the period beginning on December 7, 1941, and ending on September 2, 1945, relocated to a country while the United States was at war with that country;

(3) the term "permanent resident alien" means an alien lawfully admitted into the United States for permanent residence;

(4) the term "Fund" means the Civil Liberties Public Education Fund established in section 104;

(5) the term "Board" means the Civil Liberties Public Education Fund Board of Directors established in section 106; and

(6) the term "Commission" means the Commission on Wartime Relocation and Internment of Civilians, established by the Commission on Wartime Relocation and Internment of Civilians Act (Public Law 96-317; 50 U.S.C. App. 1981 note).

50 USC app. 1989b-8.
Contracts.

SEC. 109. COMPLIANCE WITH BUDGET ACT.

No authority under this title to enter into contracts or to make payments shall be effective in any fiscal year except to such extent and in such amounts as are provided in advance in appropriations Acts. In any fiscal year, total benefits conferred by this title shall be

limited to an amount not in excess of the appropriations for such fiscal year. Any provision of this title which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal year 1989 and thereafter.

Effective date.

TITLE II—ALEUTIAN AND PRIBILOF ISLANDS RESTITUTION

Aleutian and Pribilof Islands Restitution Act. Alaska.

SEC. 201. SHORT TITLE.

50 USC app. 1989c.

This title may be cited as the "Aleutian and Pribilof Islands Restitution Act".

SEC. 202. DEFINITIONS.

50 USC app. 1989c-1.

As used in this title—

(1) the term "Administrator" means the person appointed by the Secretary under section 204;

(2) the term "affected Aleut villages" means the surviving Aleut villages of Akutan, Atka, Nikolski, Saint George, Saint Paul, and Unalaska, and the Aleut village of Attu, Alaska;

(3) the term "Association" means the Aleutian/Pribilof Islands Association, Inc., a nonprofit regional corporation established for the benefit of the Aleut people and organized under the laws of the State of Alaska;

(4) the term "Corporation" means the Aleut Corporation, a for-profit regional corporation for the Aleut region organized under the laws of the State of Alaska and established under section 7 of the Alaska Native Claims Settlement Act (Public Law 92-203; 43 U.S.C. 1606);

(5) the term "eligible Aleut" means any Aleut living on the date of the enactment of this Act—

(A) who, as a civilian, was relocated by authority of the United States from his or her home village on the Pribilof Islands or the Aleutian Islands west of Unimak Island to an internment camp, or other temporary facility or location, during World War II; or

(B) who was born while his or her natural mother was subject to such relocation;

(6) the term "Secretary" means the Secretary of the Interior;

(7) the term "Fund" means the Aleutian and Pribilof Islands Restitution Fund established in section 203; and

(8) the term "World War II" means the period beginning on December 7, 1941, and ending on September 2, 1945.

SEC. 203. ALEUTIAN AND PRIBILOF ISLANDS RESTITUTION FUND.

50 USC app. 1989c-2.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States the Aleutian and Pribilof Islands Restitution Fund, which shall be administered by the Secretary. The Fund shall consist of amounts appropriated to it pursuant to this title.

(b) REPORT.—The Secretary shall report to the Congress, not later than 60 days after the end of each fiscal year, on the financial condition of the Fund, and the results of operations of the Fund, during the preceding fiscal year and on the expected financial condition and operations of the Fund during the current fiscal year.

(c) INVESTMENT.—Amounts in the Fund shall be invested in accordance with section 9702 of title 31, United States Code.

(d) TERMINATION.—The Secretary shall terminate the Fund 3 years after the date of the enactment of this Act, or 1 year following disbursement of all payments from the Fund, as authorized by this title, whichever occurs later. On the date the Fund is terminated, all investments of amounts in the Fund shall be liquidated by the Secretary and receipts thereof deposited in the Fund and all funds remaining in the Fund shall be deposited in the miscellaneous receipts account in the Treasury.

Securities.

50 USC app. 1989c-3.
Contracts.

SEC. 204. APPOINTMENT OF ADMINISTRATOR.

As soon as practicable after the date of the enactment of this Act, the Secretary shall offer to undertake negotiations with the Association, leading to the execution of an agreement with the Association to serve as Administrator under this title. The Secretary may appoint the Association as Administrator if such agreement is reached within 90 days after the date of the enactment of this title. If no such agreement is reached within such period, the Secretary shall appoint another person as Administrator under this title, after consultation with leaders of affected Aleut villages and the Corporation.

50 USC app. 1989c-4.

SEC. 205. COMPENSATION FOR COMMUNITY LOSSES.

(a) IN GENERAL.—Subject to the availability of funds appropriated to the Fund, the Secretary shall make payments from the Fund, in accordance with this section, as restitution for certain Aleut losses sustained in World War II.

(b) TRUST.—

(1) ESTABLISHMENT.—The Secretary shall, subject to the availability of funds appropriated for this purpose, establish a trust for the purposes set forth in this section. Such trust shall be established pursuant to the laws of the State of Alaska, and shall be maintained and operated by not more than seven trustees, as designated by the Secretary. Each affected Aleut village may submit to the Administrator a list of three prospective trustees. The Secretary, after consultation with the Administrator, affected Aleut villages, and the Corporation, shall designate not more than seven trustees from such lists as submitted.

(2) ADMINISTRATION OF TRUST.—The trust established under this subsection shall be administered in a manner that is consistent with the laws of the State of Alaska, and as prescribed by the Secretary, after consultation with representatives of eligible Aleuts, the residents of affected Aleut villages, and the Administrator.

(c) ACCOUNTS FOR THE BENEFIT OF ALEUTS.—

(1) IN GENERAL.—The Secretary shall deposit in the trust such sums as may be appropriated for the purposes set forth in this

subsection. The trustees shall maintain and operate 8 independent and separate accounts in the trust for purposes of this subsection, as follows:

(A) One account for the independent benefit of the wartime Aleut residents of Attu and their descendants.

(B) Six accounts for the benefit of the 6 surviving affected Aleut villages, one each for the independent benefit of Akutan, Atka, Nikolski, Saint George, Saint Paul, and Unalaska, respectively.

(C) One account for the independent benefit of those Aleuts who, as determined by the Secretary, upon the advice of the trustees, are deserving but will not benefit directly from the accounts established under subparagraphs (A) and (B).

The trustees shall credit to the account described in subparagraph (C) an amount equal to 5 percent of the principal amount deposited by the Secretary in the trust under this subsection. Of the remaining principal amount, an amount shall be credited to each account described in subparagraphs (A) and (B) which bears the same proportion to such remaining principal amount as the Aleut civilian population, as of June 1, 1942, of the village with respect to which such account is established bears to the total civilian Aleut population on such date of all affected Aleut villages.

(2) USES OF ACCOUNTS.—The trustees may use the principal, accrued interest, and other earnings of the accounts maintained under paragraph (1) for—

(A) the benefit of elderly, disabled, or seriously ill persons on the basis of special need; Aged persons. Handicapped persons.

(B) the benefit of students in need of scholarship assistance; Education.

(C) the preservation of Aleut cultural heritage and historical records; Historic preservation.

(D) the improvement of community centers in affected Aleut villages; and Community development.

(E) other purposes to improve the condition of Aleut life, as determined by the trustees.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 to the Fund to carry out this subsection.

(d) COMPENSATION FOR DAMAGED OR DESTROYED CHURCH PROPERTY.—

(1) INVENTORY AND ASSESSMENT OF PROPERTY.—The Administrator shall make an inventory and assessment of real and personal church property of affected Aleut villages which was damaged or destroyed during World War II. In making such

inventory and assessment, the Administrator shall consult with the trustees of the trust established under subsection (b), residents of affected Aleut villages, affected church members and leaders, and the clergy of the churches involved. Within 1 year after the date of the enactment of this Act, the Administrator shall submit such inventory and assessment, together with an estimate of the present replacement value of lost or destroyed furnishings and artifacts, to the Secretary.

(2) REVIEW BY THE SECRETARY; DEPOSIT IN THE TRUST.—The Secretary shall review the inventory and assessment provided under paragraph (1), and shall deposit in the trust established under subsection (b) an amount reasonably calculated by the Secretary to compensate affected Aleut villages for church property lost, damaged, or destroyed during World War II.

(3) DISTRIBUTION OF COMPENSATION.—The trustees shall distribute the amount deposited in the trust under paragraph (2) for the benefit of the churches referred to in this subsection.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Fund $1,400,000 to carry out this subsection.

(c) ADMINISTRATIVE AND LEGAL EXPENSES.—

(1) REIMBURSEMENT FOR EXPENSES.—The Secretary shall reimburse the Administrator, not less often than annually, for reasonable and necessary administrative and legal expenses in carrying out the Administrator's responsibilities under this title.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Fund such sums as are necessary to carry out this subsection.

50 USC app. 1989c-5.

SEC. 206. INDIVIDUAL COMPENSATION OF ELIGIBLE ALEUTS.

(a) PAYMENTS TO ELIGIBLE ALEUTS.—In addition to payments made under section 205, the Secretary shall, in accordance with this section, make per capita payments out of the Fund to eligible Aleuts. The Secretary shall pay, subject to the availability of funds appropriated to the Fund for such payments, to each eligible Aleut the sum of $12,000.

(b) ASSISTANCE OF ATTORNEY GENERAL.—The Secretary may request the Attorney General to provide reasonable assistance in locating eligible Aleuts residing outside the affected Aleut villages, and upon such request, the Attorney General shall provide such assistance. In so doing, the Attorney General may use available facilities and resources of the International Committee of the Red Cross and other organizations.

(c) ASSISTANCE OF ADMINISTRATOR.—The Secretary may request the assistance of the Administrator in identifying and locating eligible Aleuts for purposes of this section.

(d) CLARIFICATION OF TREATMENT OF PAYMENTS UNDER OTHER LAWS.—Amounts paid to an eligible Aleut under this section—

(1) shall be treated for purposes of the internal revenue laws of the United States as damages for human suffering, and

(2) shall not be included as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits.

(e) PAYMENT IN FULL SETTLEMENT OF CLAIMS AGAINST THE UNITED STATES.—The payment to an eligible Aleut under this section shall be in full satisfaction of all claims against the United States arising out of the relocation described in section 202(5).

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Fund such sums as are necessary to carry out this section.

SEC. 207. ATTU ISLAND RESTITUTION PROGRAM.

Public lands. National Wildlife Refuge System. Conservation. 50 USC app. 1989c–6.

(a) PURPOSE OF SECTION.—In accordance with section (3)(c) of the Wilderness Act (78 Stat. 892; 16 U.S.C. 1132(c)), the public lands on Attu Island, Alaska, within the National Wildlife Refuge System have been designated as wilderness by section 702(1) of the Alaska National Interest Lands Conservation Act (94 Stat. 2417; 16 U.S.C. 1132 note). In order to make restitution for the loss of traditional Aleut lands and village properties on Attu Island, while preserving the present designation of Attu Island lands as part of the National Wilderness Preservation System, compensation to the Aleut people, in lieu of the conveyance of Attu Island, shall be provided in accordance with this section.

(b) ACREAGE DETERMINATION.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall, in accordance with this subsection, determine the total acreage of land on Attu Island, Alaska, that, at the beginning of World War II, was subject to traditional use by the Aleut villagers of that island for subsistence and other purposes. In making such acreage determination, the Secretary shall establish a base acreage of not less than 35,000 acres within that part of eastern Attu Island traditionally used by the Aleut people, and shall, from the best available information, including information that may be submitted by representatives of the Aleut people, identify any such additional acreage on Attu Island that was subject to such use. The combination of such base acreage and such additional acreage shall constitute the acreage determination upon which payment to the Corporation under this section is based. The Secretary shall promptly notify the Corporation of the results of the acreage determination made under this subsection.

(c) VALUATION.—

(1) DETERMINATION OF VALUE.—Not later than 120 days after the date of the enactment of this Act, the Secretary shall determine the value of the Attu Island acreage determined under subsection (b), except that—

(A) such acreage may not be valued at less than $350 per acre nor more than $500 per acre; and

(B) the total valuation of all such acreage may not exceed $15,000,000.

(2) FACTORS IN MAKING DETERMINATION.—In determining the value of the acreage under paragraph (1), the Secretary shall take into consideration such factors as the Secretary considers appropriate, including—

(A) fair market value;

(B) environmental and public interest value; and

(C) established precedents for valuation of comparable wilderness lands in the State of Alaska.

(3) NOTIFICATION OF DETERMINATION; APPEAL.—The Secretary shall promptly notify the Corporation of the determination of value made under this subsection, and such determination shall constitute the final determination of value unless the Corporation, within 30 days after the determination is made, appeals the determination to the Secretary. If such appeal is made, the Secretary shall, within 30 days after the appeal is made, review the determination in light of the appeal, and issue a final determination of the value of that acreage determined to be subject to traditional use under subsection (b).

(d) IN LIEU COMPENSATION PAYMENT.—

(1) PAYMENT.—The Secretary shall pay, subject to the availability of funds appropriated for such purpose, to the Corporation, as compensation for the Aleuts' loss of lands on Attu Island, the full amount of the value of the acreage determined under subsection (c), less the value (as determined under subsection (c)) of any land conveyed under subsection (e).

(2) PAYMENT IN FULL SETTLEMENT OF CLAIMS AGAINST THE UNITED STATES.—The payment made under paragraph (1) shall be in full satisfaction of any claim against the United States for the loss of traditional Aleut lands and village properties on Attu Island.

(e) VILLAGE SITE CONVEYANCE.—The Secretary may convey to the Corporation all right, title, and interest of the United States to the surface estate of the traditional Aleut village site on Attu Island, Alaska (consisting of approximately 10 acres) and to the surface

estate of a parcel of land consisting of all land outside such village that is within 660 feet of any point on the boundary of such village. The conveyance may be made under the authority contained in section 14(h)(1) of the Alaska Native Claims Settlement Act (Public Law 92-203; 43 U.S.C. 1613(h)(1)), except that after the enactment of this Act, no site on Attu Island, Alaska, other than such traditional Aleut village site and such parcel of land, may be conveyed to the Corporation under such section 14(h)(1).

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $15,000,000 to the Secretary to carry out this section.

SEC. 208. COMPLIANCE WITH BUDGET ACT.

Contracts.
50 USC app. 1989c-7.

No authority under this title to enter into contracts or to make payments shall be effective in any fiscal year except to such extent and in such amounts as are provided in advance in appropriations Acts. In any fiscal year, the Secretary, with respect to—

(1) the Fund established under section 203,

(2) the trust established under section 205(b), and

(3) the provisions of sections 206 and 207,

shall limit the total benefits conferred to an amount not in excess of the appropriations for such fiscal year. Any provision of this title which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal year 1989 and thereafter.

Effective date.

SEC. 209. SEVERABILITY.

50 USC app. 1989c-8.

If any provision of this title, or the application of such provision to any person or circumstance, is held invalid, the remainder of this title and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected by such invalidation.

TITLE III—TERRITORY OR PROPERTY CLAIMS AGAINST UNITED STATES

SEC. 301. EXCLUSION OF CLAIMS.

exico.
dians.
USC app.
89d.

Notwithstanding any other provision of law or of this Act, nothing in this Act shall be construed as recognition of any claim of Mexico or any other country or any Indian tribe (except as expressly provided in this Act with respect to the Aleut tribe of Alaska) to any territory or other property of the United States, nor shall this Act be construed as providing any basis for compensation in connection with any such claim.

Approved August 10, 1988.

LEGISLATIVE HISTORY—H.R. 442:

HOUSE REPORTS: No. 100-278 (Comm. on the Judiciary) and No. 100-785 (Comm. of Conference).
CONGRESSIONAL RECORD:
Vol. 133 (1987): Sept. 17, considered and passed House.
Vol. 134 (1988): Apr. 20, considered and passed Senate, amended.
July 27, Senate agreed to conference report.
Aug. 4, House agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 24 (1988):
Aug. 10, Presidential remarks.

The Civil Liberties Act

Amendments

Public Law 102-371
102d Congress

An Act

To amend the Civil Liberties Act of 1988 to increase the authorization for the Trust Fund under that Act, and for other purposes.

Sept. 27, 1992
[H.R. 4551]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Civil Liberties Act Amendments of 1992.
50 USC app. 1989b note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Liberties Act Amendments of 1992".

SEC. 2. AUTHORIZATION FOR TRUST FUND.

Section 104(e) of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b–3(e)) is amended by striking "$1,250,000,000" and inserting "$1,650,000,000".

SEC. 3. DEFINITIONS.

Section 108(2) of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b–7(2)) is amended in the matter preceding subparagraph (A) by inserting ", or the spouse or a parent of an individual of Japanese ancestry," after "Japanese ancestry".

SEC. 4. BENEFIT OF THE DOUBT; JUDICIAL REVIEW.

(a) BENEFIT OF THE DOUBT.—Section 105(a) of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b–4(a)) is amended—

(1) by redesignating paragraphs (3) through (7) as paragraphs (4) through (8), respectively; and

(2) by inserting after paragraph (2) the following:

"(3) BENEFIT OF THE DOUBT.—When, after consideration of all evidence and relevant material for determining whether an individual is an eligible individual, there is an approximate balance of positive and negative evidence regarding the merits of an issue material to the determination of eligibility, the benefit of the doubt in resolving each such issue shall be given to such individual.".

(b) JUDICIAL REVIEW.—Section 105 of such Act is amended by adding at the end the following:

"(h) JUDICIAL REVIEW.—

"(1) REVIEW BY THE CLAIMS COURT.—A claimant may seek judicial review of a denial of compensation under this section solely in the United States Claims Court, which shall review the denial upon the administrative record and shall hold unlawful and set aside the denial if it is found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

"(2) APPLICABILITY.—This subsection shall apply only to any claim filed in court on or after the date of the enactment of this subsection.".

(c) CONFORMING AMENDMENTS.—Section 105 of such Act is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking "(6)" and inserting "(7)"; and

(ii) by striking "(4)" and inserting "(5)";

(B) in subparagraph (B) of paragraph (4) (as redesignated by subsection (a)(1) of this section)—

(i) by striking "(4)" and inserting "(5)"; and

(ii) by striking "(5)" and inserting "(6)";

(C) in paragraph (6) (as redesignated by subsection (a)(1) of this section)—

(i) by striking "(4)" and inserting "(5)"; and

(ii) by striking "(3)" and inserting "(4)"; and

(D) in paragraph (7) (as redesignated by subsection (a)(1) of this section) by striking "(6)" and inserting "(8)"; and

(2) in subsection (b) by striking "(6)" and inserting "(8)"

SEC. 5. TERMINATION OF DUTIES OF ATTORNEY GENERAL.

Section 105(e) of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b–4(e)) is amended by striking "when the Fund terminates." and inserting "180 days after the Fund terminates.".

SEC. 6. EXCLUSION OF PAYMENTS AS INCOME FOR VETERANS BENEFITS.

(a) EXCLUSION.—Section 105(f)(2) of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b–4(f)(2)) is amended by striking out ", or the" and inserting "or available under any other law administered by the Secretary of Veterans Affairs, or for purposes of determining the".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as of August 10, 1988. 50 USC app. 1989b–4 note.

SEC. 7. COMPLIANCE WITH BUDGET ACT.

50 USC app. 1989b–9.

Section 110 of the Civil Liberties Act of 1988 (50 App. 1989b–9) is amended—

(1) by inserting "(a) IN GENERAL.—" before "Subject to";

(2) in subsection (a) (as so designated by paragraph (1))—

(A) in the first sentence, by inserting "and except as provided in subsection (b)" after "105(g) of this title"; and

(B) by striking the second sentence; and

(3) by adding at the end the following new subsections:

"(b) PAYMENTS FROM DISCRETIONARY APPROPRIATIONS.—

"(1) PAYMENTS.—Any such payment made to an individual who is not of Japanese ancestry and who is an eligible individual on the basis of the amendment made by section 3 of the Civil Liberties Act Amendments of 1992 shall not be an entitlement and shall be made from discretionary appropriations.

"(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fiscal year 1993 and each subsequent fiscal year such sums as may be necessary for the payments from discretionary appropriations described in paragraph (1).

"(c) DEFINITIONS.—As used in this section—

"(1) the term 'discretionary appropriations' has the meaning given that term in section 250(c)(7) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c)(7)); and

"(2) the term 'entitlement' means 'spending authority' as defined in section 401(c)(2)(C) of the Congressional Budget Act of 1974 (2 U.S.C. 651(c)(2)(C)).".

Approved September 27, 1992.

LEGISLATIVE HISTORY—H.R. 4551:

HOUSE REPORTS: No. 102-863 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 138 (1992):
Sept. 14, considered and passed House.
Sept. 16, considered and passed Senate.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 28 (1992):
Sept. 27, Presidential statement.

59-194 O—93——10 : QL 3 (Pt. 2)

This Appendix

Was Set And Printed

by

The Malcolm Generation, Inc.
Baton Rouge, Louisiana